CAUSE NO. 03-19-00198-CV

***

IN THE COURT OF APPEALS
THIRD COURT OF APPEALS DISTRICT
AUSTIN, TEXAS

***

MADELEINE CONNOR
Appellant

V.

DOUGLAS HOOKS
Appellee

APPEAL FROM THE 201ST DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
TRIAL COURT CAUSE NO. D-1-GN-18-005130
HONORABLE CATHERINE MAUZY, PRESIDING JUDGE

APPELLEE'S BRIEF

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REFERENCE TO THE RECORD

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STATEMENT REGARDING ORAL ARGUMENTS

Counsel for Appellee Douglas Hooks believes that the record and the applicable Texas law is clear and believes oral argument is not necessary. Should the Court believe that oral argument would be helpful, Counsel for Appellee Hooks would be present to make oral arguments and answer any questions from the Court.

STATEMENT OF THE ISSUES PRESENTED

ISSUE ONE: The trial court did not abuse its discretion in declaring Madeleine Connor a vexatious litigant as the evidence is legally and factually sufficient under Chapter 11, Tex. Civ. Prac. & Rem. Code.

A. Standard of Review.
B. Legally and Factually Sufficient Evidence was Presented to Satisfy the Statutory Requirements.
C. Appellant was Declared a Vexatious Litigant by a Federal Court Satisfying the Third Alternative Ground Necessary to a Vexatious Litigant Determination.
D. Appellant, in a seven-year period immediately preceding the date Appellee filed a motion under §11.051 has commenced, prosecuted or maintained at least five litigations as a pro se litigant other tan in a small claims court that have been finally determined adversely to the plaintiff.

ISSUE TWO: The trial court's Order set out the basis upon which the trial court found Appellant to be a vexatious litigant and submitted Findings of Fact and Conclusions of Law consistent with the trial court's order and Chapter 11 §11.054 Tex. Civ. Prac. & Rem. Code.

A. The Trial Court's Order Sets Out the Specific Basis Upon Which the Court Determined Connor a Vexatious Litigant.
B. Appellant Waived Any Complaint on Appeal Regarding the Findings of Fact and Conclusions of Law Prepared by the Trial Court.

ISSUE THREE: The trial court had jurisdiction to hear and decide Defendant's motion to deem Plaintiff a vexatious litigant even though Appellant filed a non-suit of the Rule 202 Petition the day following the hearing on Defendant's motion.

ISSUE FOUR: The trial court was correct in applying the vexatious litigant statute to a Rule 202 petition.

ISSUE FIVE: The vexatious litigant statute is not unconstitutional on its face or as applied to Madeleine Connor in this case.

TO THE HONORABLE THIRD COURT OF APPEALS:

NOW COMES Douglas Hooks, Appellee and submits this Brief in accordance with the Texas Rules of Appellate Procedure ("TRAP").

STATEMENT OF FACTS

This matter arises out of a Rule 202 Petition filed by Appellant on September 4, 2018 seeking to depose Douglas Hooks and Elizabeth Hooks regarding an AVVO posting concerning Appellant. [CR 4-11]. Within the Petition itself Appellant acknowledged that the posting occurred on June 1, 2017 but she did not discover it until April 14, 2018, after a random Internet search on herself. [CR 5]. The claim made against Douglas Hooks was defamation based upon the AVVO posting. [CR 5]. Appellant also set out what she described as Substantive Law the elements of defamation. [CR 5]. The law in Texas provides that the statute of limitations for defamation is one year. §16.002 Tex. Civ. Prac. & Rem. Code. It was clear from her pleadings that the one-year statute of limitations had expired.

Upon discovery of the posting on April 14, 2018 as admitted by Appellant, she still had an opportunity and time to bring her claim of defamation forward. She added it to a lawsuit she filed against Douglas Hooks and several others in her 5th Amended Petition in Cause No. D-1-GN-16-005883 in the 200th Judicial

District of Travis County, Texas filed on May 29, 2018. [APP. 1]. She brought the same Internet defamation claim against Jane/John Does 1-16. *Id.* She did not name Douglas Hooks in her cause of action based upon the AVVO posting. Appellant maintained the cause of action in her Sixth Amended Petition filed on or about July 31, 2018 [APP. 2] and her Seventh Amended Petition filed on or about November 18, 2018 in a severed cause no. D-1-GN-18-006079 [APP. 3].[1] Appellant Connor filed a notice of appeal on the severed cause of action D-1-GN-18-006079. [APP. 4]. The Third Court of Appeals issued a Memorandum Opinion on December 18, 2018 stating that the signing of the severance order made the interlocutory orders pursuant to Chapter 27, Tex. Civ. Prac. & Rem. Code for Defendants Stephenson, Smith, Hooks and Marrs final. The Court also found that Plaintiff's Seventh Amended Petition "had no effect because it was filed after the trial court's plenary power expired." The appeal was dismissed for lack of jurisdiction. [App. 4] Appellant filed a Petition for Review to the Texas Supreme Court which was denied. [APP. 5] The Third Court of Appeals issued its Mandate on June 17, 2019. [APP. 6].

On May 15, 2018, Appellant issued a subpoena to AT&T seeking email records from Douglas Hooks. [CR 82-86] Appellant failed to provide notice of the subpoena to counsel for Douglas Hooks and she communicated same to

1 D-1-GN-18-006079 was the severed cause from D-1-GN-16-005883 against members of the Lost Creek Neighborhood Assn., including Appellee Douglas Hooks to permit Orders of Dismissal under Chapter 27, Tex. Civ. Prac. & Rem. Code to become final.

Appellant on June 1, 2018. [CR 11]. Appellant withdrew her subpoena to AT&T on June 2, 2018. [CR 58]. The correspondence was to notify Appellant that she had violated R. 205.2 of Texas Rule of Civil Procedure by failing to provide Mr. Hooks' counsel with notice of the subpoena. [CR 11].

Appellant represents in Appellant's brief at p. 3 that she believed that the subject letter was sufficient to file the instant Rule 202 which she finally did on September 4, 2018. [CR 4-11].

On October 4, 2018 Appellant filed a Notice of Hearing on her Rule 202 Petition for November 1, 2018. [CR 12]. On October 30, 2018, Appellee filed his Motion to Deem Petitioner a Vexatious Litigant and subject to, Respondent Douglas Hooks' Response to Petition for Deposition to Take Oral Deposition pursuant to Rule 202 on October 3, 2018. [CR 13-97]. Counsel for the Respondents appeared for the hearing on the Rule 202 Petition before the Honorable Dustin M. Howell, Travis County District Judge and made the announcement that a Chapter 11 motion to deem Plaintiff a vexatious litigant had been filed. The Court stayed the proceedings on the Rule 202 Petition pursuant to §11.052 Tex. Civ. Prac. & Rem. Code.

The hearing to deem Connor a vexatious litigant was set on January 23, 2019. Prior to the hearing, on January 22, 2018 Appellant filed a new lawsuit against Douglas Hooks (and Elizabeth Hooks and Jane/John Does 1-14), cause no.

D-1-GN-19-000428 in the 459th Judicial District of Travis County, Texas. [APP. 7]. As stated in Judge Mauzy's Findings of Facts and Conclusions of Law, Appellant did not "inform the Court, Respondents or Opposing Counsel that she had filed a new suit against them. . .." [CR 281]. Appellant filed a non-suit with prejudice on her Rule 202 Petition cause on January 24, 2019, after the Court took Respondent's Motion to Deem Plaintiff a Vexatious Litigant under advisement. [CR 119]. Judge Mauzy gave Appellant the opportunity to supplement her record which she did. [CR 120-127].

Appellant's complaint that she did not have adequate notice as to the precise element or elements of Chapter 11 that were asserted against her is not supported by the Motion and Supplement to the Motion filed by Respondent, Douglas Hooks together with the exhibits filed therewith. [CR 13-97, 102-118].

After hearings on Appellant's Verified Motion for Recusal [CR 148-150] and Verified Motion to Disqualify [CR 151-153] the Honorable Catherine Mauzy occurred and denied by the Honorable Eric Ellis [CR 278], on March 8, 2019 Judge Mauzy signed an Order Determining Plaintiff to be a Vexatious Litigant [CR 266-268] and in response to Plaintiff's First Amended "Request for Findings of Fact and Conclusions of Law [CR 272-274] issued the Court's Findings of Fact and Conclusions of Law. [CR 282-286]. Connor filed a Motion for New Trial [CR 287-315] which was overruled by operation of law.

SUMMARY OF THE ARGUMENT

The trial court correctly determined Appellant a vexatious litigant. The court based her decision upon legally and factually sufficient evidence under Chapter 11 Tex. Civ. Prac. & Rem. Code. The record sufficiently supports the trial court's finding that there was no reasonable probability that the Plaintiff would prevail against the Defendant. §11.054. Furthermore, the record sufficiently supports the finding that Appellant had been declared a vexatious litigant by a federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence. §11.054(3). Finally, the record sufficiently supports the finding that Appellant, in the seven-year period immediately preceding the date the defendant made the motion under § 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been: (A) finally determined adversely to the plaintiff. §11.054(1)(A).

ARGUMENTS AND AUTHORITIES

ISSUE ONE: The trial court did not abuse its discretion in declaring Madeleine Connor a vexatious litigant as the evidence is legally and factually sufficient under Chapter 11, Tex. Civ. Prac. & Rem. Code.

A. Standard of Review:

An appellate court reviews a trial court's declaration of a vexatious litigant under an abuse-of-discretion standard. *Devoll v. State,* 155 S.W. 3d 498, 502 (Tex.

App. – San Antonio 2004, no pet.). It is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, or without regard to guiding legal principles, or to rule without supporting evidence, and because a court may declare a person a vexatious litigant only after making certain statutorily prescribed evidentiary finds, appellate courts consider the legal and factual sufficiency of the evidence supporting any express or implicit findings of the trial court. *Leonard v. Abbott,* 171 S.W. 3d 451, 459 (Tex. App. – Austin 2005, pet. denied).

Under the abuse of discretion standard employed, the legal and factual sufficiency of evidence is not independent grounds of error, but relevant factors for determining whether the trial court abused its discretion. *See Zieba v. Martin,* 928 S.W. 2d 782, 786 (Tex. App. – Houston [14th Dist.] 1996, no writ); *Crawford v. Hope,* 898 S.W. 2d 937, 940-41 (Tex. App. – Amarillo 1995, writ denied).

B. Legally and Factually Sufficient Evidence was Presented to Satisfy the Statutory Requirements:

Chapter 11 of the Tex. Civ. Prac. & Rem. Code sets forth the specific criteria that must be established before a vexatious litigant motion can be granted. §11.054; *Retzlaff v. GoAmerica Communications Corp.,* 356 S.W. 3d 689, 697 (Tex. App. – El Paso 2011, no pet.). The statute sets out the timing of the filing of a motion for order determining Plaintiff a vexatious litigant (§11.051); that the filing of a motion under §11.051 specifically states that the litigation is stayed (§11.052); and a hearing, with notice to all parties is conducted to determine

whether to grant the motion (§11.053). Tex. Civ. Prac. & Rem. Code. At the hearing, the defendant must show that there is no reasonable probability that the plaintiff can prevail in the instant litigation. §11.054; *Retzlaff* at 697.

This matter was set for hearing on January 23, 2019 and noticed to all parties. The Honorable Catherine Mauzy, District Court Judge presided at the bench trial and all parties were present. After hearing the evidence and the arguments of counsel, Judge Mauzy took the matter under advisement giving leave to Appellant to supplement the record with her notice of appeal of Judge Pitman's order. [RR 69].

Pursuant to §11.054 the first determination is whether the defendant "shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant." In reviewing a factual sufficiency challenge, an appellate court sets aside a trial court's decision only if its ruling is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *Leonard v. Abbott,* 171 S.W. 3d 451

The evidence before the court was that on September 14, 2018 Appellant filed a Rule 202 Petition against Appellee, Douglas Hooks seeking to take his deposition regarding her allegations that he (and Elizabeth Hooks) was responsible for filing an AVVO Internet posting referencing Appellant and that such posting was defamatory as to Appellant. [CR 4]. The alleged posting was made on June 1,

2017. [CR 5]. Appellant admitted that during a random Internet search of herself conducted in April 2017, she discovered the AVVO posting. [CR 5].

Texas law provides that a defamation claim must be brought within one-year of the alleged defamatory statement. Chapter 16, §16.002(a), Tex. Civ. Prac. & Rem. Code; *See Velocity Databank, Inc. v. Shell Offshore, Inc.,* 456 S.W. 3d 605, 609 (Tex. App. – Houston [1st Dist.] 2014, pet. denied). When Appellant filed the Rule 202 Petition against Douglas Hooks the statute of limitations for defamation had expired. Thus, the necessary showing by defendant that there was no reasonable probability that the plaintiff would prevail in the litigation proposed against defendant as described in the Rule 202 Petition filed by plaintiff was met by Defendant Hooks.

The Honorable Catherine Mauzy in the Court's Findings of Fact and Conclusions of Law, found that Appellant's filing of a non-suit with prejudice of the Rule 202 Petition in Cause No. D-1-GN-18-005130 on January 24, 2019 "confirm[ed][sic] there was no reasonable probability that she would prevail in the litigation against Respondent Douglas Hooks. [CR 285].

In reviewing the legal sufficiency challenge, the no-evidence challenge fails if there is more than a scintilla of evidence to support the finding. *Leonard v. Abbott,* 171 S. W.3d 451, 459 (Tex. App. – Austin 2005, pet. denied); *See BMC*

Software Belgium, N.V. v. Marchand, 83 S.W. 3d 789,795 (Tex. 2002). There is clearly more than a scintilla of evidence to support the trial court's ruling.

In reviewing a factual sufficiency challenge, the appellate court sets aside the trial court's decision only if its ruling is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *Leonard* at 459; *see Cain v. Bain,* 709 S. W. 2d 175, 176 (Tex. 1986). The trial court's ruling declaring Appellant a vexatious litigant is overwhelmingly supported by the weight of the evidence presented. Therefore, the first prong required of Chapter 11, §11.054. Tex. Civ. Prac. & Rem. Code was supported with the legal and factual sufficiency required.

C. Appellant was Declared a Vexatious Litigant by a Federal Court Satisfying the Third Alternative Ground Necessary to a Vexatious Litigant Determination.

After finding the first prong of the statute was supported by legally and factually sufficient evidence, the trial court was then able to move forward to consider the three alternative grounds necessary to a vexatious litigant determination. At least one must be found. §§11.054(1)-(3); *See Niel Nations Forist v. Vanguard Underwriters Inc. Co.,* 141 S. W. 3d 668, 669-670, (Tex. App. – San Antonio, 2004, reh. overruled); *Turner v. Grant,* 2011 WL 5995538*3 (Tex. App. – Amarillo 2011, no pet.)(mem. op.).

Chapter 11, §11.054(3) provides the following:

> [t]he plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Connor was declared to be a vexatious litigant in an Order by United States District Judge Robert Pitman dated August 30, 2018 in *Connor v. Stewart,* No.1:17-CV-827-RP, 2018 U.S. Dist. LEXIS 147960 (W.E. Tex. 2018). [CR. 21-30]. In that Order, the Honorable Robert Pitman stated, in part, the following:

> The present action is the latest Chapter in Connor's history of vexatious litigation against Defendants. The Court finds not only that Connor's claims were asserted in bad faith but also that she subsequently asserted litigation positions in bad faith during this litigation.
>
> Connor's extensive and meritless litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them.
>
> **[T]he Court finds that the imposition of a pre-filing injunction against Connor is warranted . . .. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.**

Id. at 5-9, (*emphasis added*). [CR 25-29].

The Honorable Judge Pitman could not have been more forthright in his Order. He was firm and clear that Connor had engaged in vexatious litigation and her claims were asserted in bad faith. *Id.* Contrary to the argument made by

Appellant on p.13 of her brief, Judge Pitman, *sua sponte,* did indeed, make a "*declaration*, finding, announcement or formal statement" when he wrote,

> **"[T]he Court finds that the imposition of a pre-filing injunction against Connor is warranted . . .. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted."**

Id.

Appellant argued at the hearing before Judge Mauzy that Judge Pitman's Order was not final. [RR 54, l. 17-25, 55, l. 1]. However, it was a final order. It was the ruling of the United States Federal District Court of the Western District of Texas-Austin Division.

In the federal court case, Connor brought claims of defamation per se and intentional infliction of emotional distress based upon alleged actions by the Board of Directors of the Lost Creek Limited District. [CR 21-30, 32-40, 50-61, 62-68]. She attempted to amend her pleading to add a claim against Charles McCormick arising out of an email he sent to her supervisor at the Texas Veteran's Commission as discussed in Judge Pitman's order [CR 58] and by the Fifth Circuit upon Connor's appeal of the second dismissal of her federal claims. [CR 62-68]. Within the state law claims that were part of her federal claims, the Court discusses her claim of defamation and intentional infliction of emotional distress, an effort of the Lost Creek Neighborhood Association to file a recall on her to remove her as

President of the Association [CR 52], and instigation of a mob of residents to harass her at an LCNA meeting [CR 55] among other claims.

In the suit Appellant filed against board members of the Lost Creek Neighborhood Association, D-1-GN-16-005883, *Madeleine Connor v. Marc Stephenson, Claude Smith, Douglas Hooks and Megan Marrs;* in the 200th Judicial District Court of Travis County, Texas she brought claims of defamation per se against these four board members alleging defamation per say and intentional infliction of emotional distress arising out of conduct that included a recall to remove Appellant as President of the LCNA, instigation of a mob of residents to harass her at an LCNA meeting, and posting of a censure without her permission. [APP 1] In the First Amended Petition filed on May 9, 2017 by Appellant, she included LCNA board member, Megan Marrs and Board of Director of the Lost Creek Limited District, Charles McCormick (who was a defendant in the federal court suit) where she sued him for defamation and intentional infliction of emotional distress based upon the email he sent to her supervisor. [APP 2]. Appellant raised the AVVO posting which was the subject of her Rule 202 Petition against Douglas Hooks in her 5th Amended Petition wherein she made claims against John/Jane Does 1-16. [APP 3]. Appellant did not associate the AVVO claim with Douglas Hooks until her Rule 202 Petition.

D. Appellant, in a seven-year period immediately preceding the date Appellee filed a motion under §11.051 has commenced, prosecuted or maintained at least five litigations as a pro se litigant other tan in a small claims court that have been finally determined adversely to the plaintiff.

Appellant has used the courts as a weapon of harassment against many persons, including Appellee. Judge Mauzy listed several causes of action in her Findings of Fact and Conclusions of Law. [CR 283-284]. Appellant complains that the causes of action arise out of the same original proceeding or are not final. Appellant's brief, p. 17-20. That representation is not quite accurate. Here are some examples:

a. *Connor v. Castro et al,* No. D-1-GN-15-003714, in the 459th Judicial Court of Travis County, Texas. It is the original case filed by Appellant against Directors of the Lost Creek Limited District. It was originally based upon the construction of sidewalks in the subdivision but morphed into claims of defamation, retaliation, intentional infliction of emotional distress and § 1983 federal claims. As federal claims were included it was removed to federal court.

b. *McIntyre v. Castro,* No. 1:16-CV-490-RP (W.D. Tex. Apr. 21, 2016). The federal claims of that case were dismissed by Order of the Honorable Robert Pitman and the state law claims remanded back to state court. [CR50-61].

d. *Connor v. Stephanson, et al.,* Cause No. D-1-GN-16-005883; in the 200th Judicial District Court of Travis County, Texas. This is the original case filed by Appellant against three board members of the Lost Creek Neighborhood Association claiming defamation and intentional infliction of emotional distress over conduct of a recall to remove her as President of the LCNA, instigating a mob to harass her at a LCNA meeting, and filing a censure about her. [APP. 1]. She added board member Megan Marrs and Limited District Director Charles McCormick to this lawsuit making similar claims of defamation and intentional infliction of emotional distress against McCormick regarding an email sent to Col. Palladino, Connor's supervisor. [APP. 2] This the same email addressed by Judge Pitman in his Order dated April 25, 2017. [CR 50-61] and by the Fifth Circuit Court of Appeals in their opinion affirming the District Court's order. [CR 62-68].[2]

e. *In re Connor,* No. 18-3-007722, 2018 Tex. App. LEXIS 10238 (Tex. App. – Austin May 2, 2018. In an original proceeding Connor filed a Writ for Mandamus against the Honorable Tim Sulak complaining of his Order granting a severance for four defendants in D-1-GN-16-005883 that had received orders of dismissal pursuant to Chapter 27 of the Tex.

2 This matter was severed into Cause No. D-1-GN-18-006079; in which Appellant's appeal was denied by the Texas Supreme Court on April 26, 2019 and the mandate issued June 17, 2019.

Civ. Prac. & Rem. Code in order that the Orders would become final which they did.

f. *McCormick v. Connor,* No. 03-18-00031-CV, 2018 Tex. App. LEXIS 3077 (Tex. App. – Austin May 2, 2018). This was an appeal filed by Charles McCormick on the trial court's order granting in part and denying in part of Motion to Dismiss pursuant to the Texas Citizens Participation Act. [APP 7]]Appellant McCormick discovered that the appeal was untimely and filed a motion to dismiss for want of jurisdiction which was granted. *Id.* The court denied Appellee Connor's motion for damages and any other pending motions. *Id.*

g. *Connor v. Stewart,* No. 1:17-CV-827-RP, 2018 U.S. Dist. LEXIS 90603 (W.D. Tex. 2018). Connor attempted to add new federal claims in her suit against the Lost Creek Limited District causing the case to be removed once again to the federal court. Judge Pitman dismissed the case with prejudice [CR 30] and *sua sponte* declared Appellant a vexatious litigant requiring her to seek permission from the federal court before filing any future litigation. [CR 21-29].[3]

k. *Connor v. Lost Creek Neighborhood Association,* D-1-GN-17-005950, in the 459th Judicial District Court of Travis County, Texas. This case was

3 In No. 18-50815 the Fifth Circuit affirmed the Order of Judge Pitman in USDC No. 1:17-827-CV-RP. A copy of the per curiam decision is included as APP .

originally part of Cause No. D-1-GN-16-005883. The claims made against the LCNA were very different from those made against the individual board members. A motion to sever the case was made and granted becoming D-1-GN-5950 in the 459th Judicial District Court of Travis County, Texas.[4]

l. *McIntyre v. Castro,* No. 13-17-00565-CV. This is the appeal of Cause No. D-1-GN-15-003714, the first lawsuit filed by Appellant against the Lost Creek Limited District. Appellant appealed the dismissal of the case to the Thirteenth Court of Appeals. On October 12, 2018, the Thirteenth Court denied the amended motion for rehearing. [APP 8]. On September 6, 2018, the Thirteenth Court of Appeals issued its Mandate. [APP 9]. On January 11, 2019, the Texas Supreme Court denied the Petition for Review. [APP 10].

r. *McIntyre v. Castro,* No. 1-15-CV-1100-RP, 2016 U.S. Dist. LEXIS 61555 (W.D. Tex. 2016) with new claims for monetary damages and retaliation. The Honorable Robert Pitman once again orders that the case be dismissed for failure to state of claim under Rule 12(b)(6) and remands the state court claims back to state court. [CR 32-40]. The Fifth

4 A motion for summary judgment was granted on March 1, 2019 [App.] and this matter is currently on appeal to the Third Court of Appeals, no. 03-19-00347-CV.

Circuit affirmed the District court's order on December 9, 2016. [CR 41-45]. Appellant's motion for rehearing was denied. [CR 46-47].

The trial court listed eighteen (18) litigations in support of her finding that Plaintiff had at least five litigations as a pro se litigant other than in small claims court that have been either (A) finally been determined adversely to plaintiff; (B) permitted to remain pending at least two years without having been brought to trial or hearing; or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. §11.054. Tex. Civ. Prac. & Rem. Code. Appellant admits at the hearing that "certain Courts have made those findings." That is, findings of vexatious and without merit. [RR. 44, l. 81-21] And she admits that four (well actually five) of them have been finally dismissed. [RR. 44, l. 24, 45, l. 1].

It is clear from the three Orders of Judge Robert Pitman that Appellate continued to prosecute the same claims against the same defendants even after they were dismissed. [CR 285]. There was discussion at the hearing that Appellant had continued to prosecute Douglas Hooks. [RR 21-23].

Appellant was declared a vexatious litigant by United States Federal District Court Judge, Robert Pitman *sua sponte*. The federal claims he oversaw (and dismissed) were based on the same or substantially similar facts, transition or occurrence.

The trial court had before it numerous litigations commenced, prosecuted or maintained in at least five litigations. The trial court did not abuse its discretion in declaring Madeleine Connor a vexatious litigant pursuant to §11.054(3). The trial court, in its findings of fact and conclusions of law found that §11.054(1) was also supported by record and evidence. Appellant's Issue No. One should be denied and the Order of the trial court determining Plaintiff a vexatious litigant should be affirmed.

ISSUE TWO: The trial court's Order set out the basis upon which the court found Appellant to be a vexatious litigant and submitted Findings of Fact and Conclusions of Law consistent with the trial court's order and Chapter 11 §11.054 Tex. Civ. Prac. & Rem. Code.

A. The Trial Court's Order Sets Out the Specific Basis Upon Which the Court Determined Connor a Vexatious Litigant.

The trial court's order dated March 8, 2019 was specific as to the basis upon which the court granted Defendant Hooks' Motion to Deem Plaintiff Madeleine Connor a Vexatious Litigant pursuant to §11.051 *et seq.* of the Tex. Civ. Prac. & Rem. Code. [C.R. 266-268] On March 19, 2019, Appellant filed her Requests for Findings of Fact and Conclusions of Law and on the same day filed her First Amended Request for Findings of Facts and Conclusions of Law. [CR 269-271, 272-274 respectively]. The only difference between the first Request for Findings of Fact and Conclusions of Law and the amended request is no. (6) which states:

(6) The implied conclusion of law that Movants had shown

> that there was not a reasonable probability that Connor would prevail in the litigation against Movants, in light of the evidence presented that Movants had made the false and defamatory AVVO posting, central to Connor's request for Rule 202 relief. . . . . "A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant. . . ."

Within the trial court's Order Judge Mauzy specifically states that she took judicial notice of the filing of a non-suit with prejudice of the Rule 202 Petition. [CR 266]. In the trial court's Findings of Fact and Conclusions of Law, Judge Mauzy specifically found that Appellant non-suited her Rule 202 Petition with prejudice, thereby "confirming there was no reasonable probability that she would prevail in the litigation against Respondent Douglas Hooks." [CR 280-286]. This finding satisfied the first prong of §11.054. Moreover, as set out under Issue One above, the evidence and record provided to the trial court was clear and unequivocal that the statute of limitations had run as to the AVVO posting of which Appellant complained prior to her filing the Rule 202 Petition. And therefore, the trial court's Order and Findings of Fact and Conclusion of Law was correct and factually and legal sufficient. Defendant Hooks met his burden to show that there was reasonable probability that Plaintiff would prevail in the litigation against him.

B. Appellant Waived Any Complaint on Appeal Regarding the Findings of Fact and Conclusions of Law Prepared by the Trial Court.

Appellant has the burden of asking the appellate court to overturn a decision by a trial court. In the instance of a non-jury trial, Appellant must complain of specific findings of fact and conclusions of law of the trial court, as a general complaint against the trial court's judgment does not present a justiciable question. *Fiduciary Mortgage Co. v. City Nat'l Bank,* 762 S.W. 2d 196, 204 (Tex. App. – Dallas 1998, writ denied). In the instant case, Appellant's Amended Request for Findings of Fact and Conclusions of Law asked the trial court to address that there was not a reasonable probability that Connor would prevail in the litigation against Movants, in light of the evidence. The trial court addressed Appellant's requested finding and conclusion wherein the trial court stated that she took judicial notice of the filing of a non-suit with prejudice of the Rule 202 Petition. [CR 266]; and specifically found that Appellant non-suited her Rule 202 Petition with prejudice thereby "confirming there was no reasonable probability that she would prevail in the litigation against Respondent Douglas Hooks." [CR 280-286].

Appellant filed a Verified Motion for New Trial. [CR 287-315]. A review of the Motion demonstrates that Appellant did not complain that the trial court did not require Defendant to *show* there is not a reasonable probability the plaintiff will prevail in the litigation. Appellant failed to timely object to the trial court's

findings of fact and conclusions of law on that issue as required by Texas Rule of Appellate Procedure 33.1(a). In a civil case, the overruling by operation of law of a motion for new trial preserves for appellate review a complaint properly made in the motion. 33(b). In the instant case, Appellant failed to make the complaint in her Verified Motion for New Trial. Therefore, Appellant waived her complaint about this finding on appeal. *See Buckeye Ret. Co. LLC v. Bank of America, N.A.,* 239 S.W. 3d 394, 405-406 (Tex. App. – Dallas 2007, pet. denied)(Bank waived attorney's fees available under the rules because it failed to request additional or different findings of fact); *Cotton v. Weatherford Bancshares, Inc.,* 187 S.W. 3d 687, 708 (Tex. App. – Fort Worth 2006, pet. denied)(party waived mitigation defense after failing to request additional findings of fact and conclusions of law.); *Smith v. Smith,* 22 S.W. 3d 140, 149 (Tex. App. – Houston [14th Dist.] 2000, no pet.)(Party waived his right to complain on appeal about any error he assumed the court made by failing to request additional findings of fact and conclusions of law.).[5]

Appellant is not only incorrect about specificity of the trial court's order and the Findings of Fact and Conclusions of Law submitted by the trial court, but has waived any complaint she could have made on appeal. Therefore, Issue No. Two

5 Appellee concurs with the arguments of the amicus in this matter and incorporates the arguments made by the amicus on this issue.

should be denied and trial court's Order Determining Plaintiff a Vexatious Litigant should be affirmed.

ISSUE THREE: The trial court had jurisdiction to hear and decide Defendant's motion to deem Plaintiff a vexatious litigant even though Appellant filed a non-suit of the Rule 202 Petition the day following the hearing on Defendant's motion.

Appellant seeks to be rewarded for filing yet another lawsuit against Douglas Hooks by asking this Court to find that the trial court lacked jurisdiction once Appellant non-suited the Rule 202 Petition in an attempt to sidestep the trial court. It was actually not the filing of the new lawsuit that would make the Rule 202 Petition moot, but in fact it was the expiration of the statute of limitations that would do so. *See Glassdoor, Inc. v. Andra Grp., LP,* 575 S.W.3d 523, 530 (Tex. 2019, *reh'g denied* (June 21, 2019).[6]

Appellant's arguments lack any basis in law on more than one level. First, Texas law provides that a non-suit does not extinguish a defendant's affirmative claims for relief or sanctions. Specifically, Rule 162, T.R.C.P. provides in part:

> Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under this rule shall have no effect on any motion for sanctions, attorney's fees or other costs, pending

6 Defendant Douglas Hooks was granted a summary judgment in Cause No. D-1-GN-19-000428, *Madeleine Connor v. Douglas Hooks, Elizabeth Hooks and Jane/John Does 1-14*; in the459th Judicial District Court of Travis County, Texas, the "new suit." Procedurally, Hooks is currently awaiting a decision from this Court of Connor's request for permissive appeal, No. 03-19-000571.

at the time of dismissal, as determined by the court.

Appellee sought affirmative relief of Appellant's ongoing efforts to use the courts to harass him. In *Crittendon v. Doe*, No. 09-16-00375-CV, 2017 WL 5179790, at *2 (Tex. App. – Beaumont, Nov. 9, 2017, no writ), the court stated that Crittendon's notice of non-suit had no effect on the trial court's authority to consider and rule on Raschke's motion to declare Crittendon a vexatious litigant, which Raschke filed before Crittendon attempted to non-suit his claims against Raschke. *See also Garrett v. Macha,* No. 2-09-443-CV 2010, WL 3432826, at *5 (non-suit does not defeat vexatious litigant motion). Further, Chapter 11, §11.052 provides that upon the filing of a motion, the litigation is stayed.

Appellant's effort to thwart the trial court by filing a non-suit had no effect. The trial court had jurisdiction to hear and decide the vexatious litigant motion. This Court should affirm the trial court's Order Determining Plaintiff a Vexatious Litigant. [CR 266-268].

ISSUE FOUR: The trial court properly applied the vexatious litigant statute to the Rule 202 petition.

The fact that a Rule 202 Petition is involved in the vexatious litigant motion does not change the outcome. *Glassdoor Inc. v. Andra Grp., LP* 575, S.W. 3d 523 (Tex. 2019, *reh'g denied* (June 21, 2019). *Glassdoor* is on point with the instant

case. In August 2015, Andra filed a Petition to conduct a pre-suit deposition of the website operator. Between July 2014 and June 2015 ten negative reviews of Andra Group were posted on Glassdoor's site by anonymous individuals. Glassdoor filed an Answer opposing the relief requested and also filed a motion to dismiss under the Texas Citizen's Participation Act (TCPA), Chapter 27 of the Tex. Civ. Prac. & Rem. Code. On February 18, 2016 the trial court denied the motion to dismiss and granted Andra's Rule 202 Petition to conduct depositions.

On appeal to the Texas Supreme Court Glassdoor alleged that the statute of limitations had expired on Andra's claim, thus making the Rule 202 Petition moot. Ultimately, the Court held that the statute of limitations had run on the potential claims Andra sought to investigate under Rule 202, and thus Andra's petition for pre-suit discovery was moot. *See Glassdoor, Inc. v. Andra Grp., LP,* 575 S.W.3d 523, 530 (Tex. 2019, *reh'g denied* (June 21, 2019). Likewise, the statute of limitations had run on Connor's claims against Douglas Hooks as set out in her Rule 202 petition, making it moot. The defendant's burden of showing there was no reasonable probability that the plaintiff would prevail in the litigation against him was met.

Furthermore, while Appellant raised the issue that the vexatious statute did not apply to Rule 202 Petitions [RR 22, l. 14-19] and in her Amended Request for Findings of Fact and Conclusions of Law [CR 272-274], she did not preserve it on

appeal. TRAP 33.1(a) and (b) as she did not include a complaint about it in her Verified Motion for New Trial. [CR 287-315]. To preserve a complaint for appellate review, the complaining party must present the complaint to the trial court by timely request, objection, or motion. *Southwest Elec. Power Co. v. Grant,* 73 S.W. 3d 211, 222 (Tex. 2002); TRAP 33.1(a) and (b).

Appellant's Issue No. Four should be denied and this Court should affirm the trial court's order determining Plaintiff a vexatious litigant because the law in Texas clearly applies the vexatious litigant statute in Rule 202 Petition matters and because Appellant failed to preserve this argument for appeal.

ISSUE FIVE: The vexatious litigant statute is not unconstitutional on its face or as applied to Madeleine Connor in this case.

Appellant attempts to argue that Chapter 11, Tex. Civ. Prac. & Rem. Code is an unconstitutional prior restraint of her protected First Amendment liberties. [Appellant's brief, p. 32]. She makes this argument knowing that courts in Texas have looked at this closely and determined that the statute is not unconstitutional. It has a legitimate purpose that is, to restrict frivolous and vexatious litigation, *Leonard* at 457; *See Devoll v. State,* 155 S.W.3d 498, 501 (Tex. App. – San Antonio 2004, no. pet.) and to strike a balance between Texans' rights to access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit.

Retzlaff at 697, *citing Sweed v. Nye,* 319 S.W.3d 791, 793 (Tex. App. – El Paso 2010, pet. denied); *Leonard* at 455.

The statute is carefully crafted to require notice, a hearing and evidence to establish that the very specific criteria in the statutes have been met. *Retzlaff* at 697.

> The open courts provision of the Texas Constitution "includes at least three separate guarantees: (1) courts must actually be operating and available; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, 'so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress.'"

Leonard at 457; *Howell v. Texas Workers' Comp. Comm'n,* 143 S.W. 3d 416. 444 (Tex.App. – Austin 2004, pet. denied).

The specific criteria of the statute, is on its face, a due process protection for the litigant. The inquiry is not vague or insubstantial. First, the defendant must show that there is no reasonable probability that the plaintiff can prevail in the instant litigation. §11.054, Tex. Civ. Prac. & Rem. Code. Next, the statute sets out three specific instances where, if shown, the plaintiff may be found by the court to be a vexatious litigant. The term "may" indicates that the court has discretion, once it has made the required statutory findings, to declare a party a vexatious litigant. *Leonard* at 458-459; *Devoll* at 502. It would be an abuse of discretion for

a trial court to rule arbitrarily, unreasonably, without regard to guiding legal principles or without supporting evidence. *Leonard* at 459.

"The statute does not authorize courts to act arbitrarily, but permits them to restrict a plaintiff's access to the courts only after first making specific findings that the plaintiff is a vexatious litigant based on factors that are closely tied to the likelihood that the litigation is frivolous." *See Potts,* 357 S.W. 3d at 769; Tex. Civ. Prac. & Rem. Code §11.054. Judge Mauzy submitted Findings of Facts and Conclusions of Law in support of her March 8, 2019 Order determining Connor a vexatious litigant. [CR 280-286]. Connor is not prevented from access to the courts, she must, if a *pro se,* request permission from the local administrative judge to file a lawsuit. §11.102, Tex. Civ. Prac. & Rem. Code; *Retzlaff* at 697; *Leonard* at 458. The statute provides that security may be required after hearing the evidence, on the motion. §11.055, Tex. Civ. Prac. & Rem. Code; *Leonard* at 457[7]

Numerous Texas appellate courts have considered whether Chapter 11 of the Texas Civil Practice & Remedies Code is unconstitutional and all of them have concluded that it does not violate the vexatious litigant's due process rights. *See Potts,* 357 S. W. 3d at 769 (vexatious litigant statute does not violate the vexatious litigant's Constitutional due process rights.); *Johnson v. Sloan,* 320 S.W.3d 388; 389-90 (Tex. App. – El Paso 2010, pet. denied); *Clifton v. Walters,* 308 S.W. 3d

7 Appellant has requested permission to file appeals from the administrative judge for Travis County, the Honorable Lora Livingston and has always been granted permission and not be required to provide security.

94, 101-102 (Tex. App. – Fort Worth 2010, pet. denied); *In re Johnson,* No. 07-07-0245-CV, 2008, orig. proceeding) (mem. op.); *Caldwell v. Zimmerman,* No. 03-18-00168-CV, 2019 WL 1372027, at *2 (Tex. App. – Austin Mar. 27, 2019)(Vexatious litigant statute does not violated due process, equal protection of the law and to petition the courts for relief.); *Leonard* at 459 (We find that the statute does not implicate Leonard's constitutional right to equal protection.); *Liptak v. Banner,* No. 3:01-CV-0953-M, 2002 US. Dist. LEXIS 940, at *13 (N. D. Tex. Jan. 18, 2002)("The Fifth Circuit has held that requiring a plaintiff to receive the permission of the Court before filing a lawsuit is appropriate where plaintiffs are 'abusing the judicial process by such filings and [are] delaying the consideration of meritorious claims.'").

Chapter 11 of the Texas Civil Practice and Remedies Code is not unconstitutional on its face or as applied to Appellant. Appellant's Issue No. 5 should be denied and the trial court's order determining Plaintiff a vexatious litigant should be affirmed.

PRAYER

For the reasons set out above, Appellee, Douglas Hooks prays that this Court will find that the Honorable Catherine Mauzy did not abuse her discretion in determining Appellant, Madeline Connor a vexatious litigant, that the find that Chapter 11 of the Texas Civil Practice & Remedies Code is not unconstitutional,

either on its face or as it applied to Appellant and that the Court will affirm the Order Determining Plaintiff a Vexatious Litigant [CR 266-268] and for such other and further relief to which Appellee may show himself justly entitled, either at law or in equity.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In compliance with Tex. R. App. P. 9.4(i)(3), this is to certify that Appellee's Brief contains 8045 words. This does not include the caption, signature, proof of service, certificate of compliance as per Tex. R. App. P. 9.4(i)(1)

Sheryl Gray Rasmus

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon the below named individuals as indicated, and according to the Texas Rules of Appellant Procedure and/or via electronic notification and/or email on this 19TH day of January 2020:

Madeleine Connor
Attorney at Law
P. O. Box 161962
Austin, Texas 78716-1962

via Electronic Notification
and/or Email: mgbconnor@yahoo.com

Sheryl Gray Rasmus

APPPENDIX 1

CAUSE NO. D-1-GN-16-005883

MADELEINE CONNOR, Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	
MARC STEPHENSON, CLAUDE SMITH, ANN HUTCHISON McCORMICK, MELISSA OLEN, JAY BRIM, ELIZABETH HOOKS, DOUGLAS HOOKS, CHARLES "CHUCK" McCORMICK, MEGAN MARRS, UNITED STATES LIABILITY INS. CO., and JANE/JOHN DOES 1-16 Defendants.	§	TRAVIS COUNTY, TEXAS
.	§	200th JUDICIAL DISTRICT COURT

PLAINTIFF'S FIFTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Madeleine Connor, Plaintiff, files this fifth amended original petition complaining of Marc Stephenson, Claude Smith, Ann Hutchison McCormick, Melissa Olen, Jay Brim, Elizabeth Hooks (non-suited), Douglas Hooks, "Chuck" McCormick, Megan Marrs, United States Liability Insurance Company, and Jane/John Does 1-16, Defendants, and in support thereof would show the following:

I. DISCOVERY LEVEL 2

1. Plaintiff intends discovery in this case to be conducted under Level 2 Discovery, as that is defined in the Texas Rules of Civil Procedure.

II. AMOUNT IN CONTROVERSY

2. Plaintiff seeks monetary, declaratory, and injunctive relief within the jurisdictional limits of this court. Plaintiff seeks monetary relief for more than $1,000,000.

III. PARTIES

3. Plaintiff Madeleine Connor is an individual residing in Travis County, Texas.

4. Defendant Marc Stephenson is an individual and 2015 LCNA board member and was served and has answered; Defendant Claude Smith is an individual and 2015 board member and was served and has answered; Chuck McCormick is an individual, and has been served and has answered; Defendant Douglas Hooks is an individual and 2015 LCNA board member, and was served and has answered; Defendant Elizabeth Hooks has been non-suited; Megan Marrs (in her official capacity only) is 2017 LCNA's President has been served and has answered; Defendant Ann Hutchison McCormick, is an individual and LCNA board member and may be served at LCNA's principal place of business is at 1306 Quaker Ridge Dr., Austin, Texas, 78746; Melissa Olen is an individual and LCNA board member and may be served at LCNA's principal place of business is at 1306 Quaker Ridge Dr., Austin, Texas, 78746; Jay Brim is an individual and LCNA board member and may be served at LCNA's principal place of business is at 1306 Quaker Ridge Dr., Austin, Texas, 78746; Defendant United States Liability Insurance Company has its principal place of business in Wayne, Pennsylvania, and may be served at 1190 Devon Park Drive, Wayne, PA, 19087; Defendants Jane/John Doe are individuals residing in Austin, Texas, whose identity have not yet been discovered by the time of this amended petition.

IV. JURISDICTION AND VENUE

5. This is an action for defamation per se, declaratory judgment, injunctive relief, and intentional infliction of emotional distress. As such, this Court has jurisdiction to hear the claims

under Texas Law. Venue is proper in this County under §15.002 of the Texas Civil Practice and Remedies Code as all of the events giving rise to Plaintiff's claims occurred.

V. FACTS

6. Madeleine Connor is a residence of Lost Creek, and was a member of the Lost Creek Neighborhood Association. In late 2014, Connor was elected as the President of the Lost Creek Neighborhood Association, after having served as Vice President for part of 2013. Connor was also an appointee as Scribe editor by two former LCNA presidents.

7. After serving only three months as LCNA President, Connor received several complaints about the Architectural Control Committee (ACC) from local public officials (Directors Eric Castro, Nancy Naeve, and Leah Stewart of the Lost Creek Municipal Utility District [MUD]), residents, and the former LCNA President Jenn Lamm. In sum, the complaints charged that the ACC, then composed of Defendant Smith, Wilson Shirley, and Oksana Belov, had failed to apply the ACC rules evenly throughout the neighborhood, violated standards of practice (such as granting oral approvals, which obviously cause fairness problems with huge ripple effects), were rude to residents, and in general, were abusing their power. Connor took action and investigated the claims, and found them to be valid. Accordingly, under the LCNA Bylaws at the time, Connor terminated the sitting ACC members' appointments, and proffered replacement members for LCNA Board approval.

8. This did not sit well with Stephenson, D. Hooks, and Smith, and they and others retaliated, launching an aggressive campaign of intimidation against Connor. After months of harassment, they and others tried to have Connor removed from her position as President by recall procedure in the LCNA bylaws, but Connor fought back and retained her position. However, on or about December 6, 2015, D. Hooks, and Smith voted to post on the LCNA website a defamatory

"censure" against Connor, which contained material untruths, namely that Connor had "unilaterally" removed the ACC members from their positions.[1] Further, Defendants published material falsehoods that Plaintiff had made "unsubstantiated public charges of impropriety against sitting MUD Directors."

As a result of the untrue and inherently pejorative "censure," Connor's reputation as a lawyer has been damaged, as at least one client was concerned enough about it to immediately contact Connor, and subsequently, the "censure" has been highlighted in another lawsuit. Of course, however, as a professional, Connor does not have to show actual damage in order to prevail and receive damages for the defamatory statements. Further, there was no agreement, bylaw, or rule of law or procedure that would allow for the publication of the false "censure" on the world-wide web. Of course, the intent was to unfairly harm Connor to the maximum extent possible.

9. Connor brings this defamation claim against Defendants Stephenson, D. Hooks, and Smith in their official and individual capacities and within the one-year statute of limitations.

10. On or about October 2015, Elizabeth Hooks engaged in gross and despicable actions against Connor, including posting on the neighborhood web page "NextDoor," the most hateful and vile statements about Connor, with the intent to cause her severe emotional distress. Connor asked that the statements be removed from NextDoor, and some three weeks later, the statements were removed by NextDoor. Elizabeth Hooks was removed from the website for her vicious and

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[1] Stephenson entered a vote of abstention, but participated in and facilitated the posting of the "censure" on the opening page of the LCNA website. Further, Connor and another resident contacted Stephenson and insisted that he remove the "censure" from the world-wide web, but he did not respond, nor did he remove the "censure" from public viewing. Stephenson finally removed the "censure" from public access on December 21, 2015, at which time, he placed the "censure" on a password-protected page of the LCNA website. Plaintiff is not aware of when the "censure" was ultimately removed from the "members-only" password-protected page.

injurious statements about Connor. Apparently, Ms. Hooks is now able to post messages on NextDoor, but has not repeated her injurious attacks on Connor.

11. The content and allegations contained on the NextDoor web page made by E. Hooks were so shocking and cruel that Connor was devastated, and suffered extreme emotional distress. Connor, who is unmarried and had teenage children living at home, suffered many sleepless, nightmare-filled nights, and worried that her children would be bullied or teased by other children regarding Elizabeth Hooks' vicious postings. Old and new friends contacted Connor to commiserate with her and comfort her about the vicious and unprovoked attacks.

12. Connor brings this intentional infliction of emotional distress suit against Elizabeth Hooks within the two-year statute of limitations.

13. On November 22, 2016, Defendant Chuck McCormick published false and defamatory statements against her to her employer—which damages for defamation per se would naturally flow. See Ex. 1. The letter contained material falsehoods so outrageous and hateful, it was not only slanderous, it caused Plaintiff severe emotional distress. "Chuck's letter" to Plaintiff's employer contains the following material falsehoods, and others: that Plaintiff has "borderline personality disorder with histrionic features"; Plaintiff was fired from her job at the Attorney General's Office; that Plaintiff has a vendetta against men; and "who's [sic] sole goal [sic] to further cripple veterans and other disabled citizens...." The letter caused severe emotional distress, in part because, the letter was directed to Plaintiff's supervisor during a period of time that she was being considered for a promotion for or selection to the General Counsel position of the Texas Veterans Commission.

14. On or about January 20, 2017, Defendant United States Liability Insurance Co. (USLI) denied Plaintiff "Directors and Officers Liability Coverage" under the LCNA's insurance policy.

When Defendants moved to dismiss the torts against them, Connor sought coverage under the policy, but Defendant USLI denied that the motions constituted a "claim." Subsequently, Connor requested representation and coverage again when Megan Marrs filed a motion to dismiss against Plaintiff, seeking monetary relief and sanctions against Plaintiff. That request was also denied by USLI on October 9, 2017.

15. On or about December 3, 2017, Defendant LCNA board members illegally diverted LCNA funds to the City of Austin in furtherance of an infrastructure project to construct speed bumps in on the President's (Megan Marrs') street. Plaintiff seeks a declaration that this Board action diverting illegally begotten "tax" funds/cable money is and was illegal. Further, Plaintiff seeks an injunction ordering the Board to request that the funds be returned to the LCNA from the City of Austin.

VI. CAUSES OF ACTION

A. DEFAMATION AND LIBEL PER SE

16. As more fully set forth above, Defendants Stephenson, D. Hooks, and Smith, made defamatory statements about Connor which were untrue, disparaging, and therefore, damaged the reputation of Connor and caused other damages. [2] Specifically, the publication was entitled a "censure" which is pejorative in nature, and by its nature, indicates (falsely) that Connor had done

[2] One other Board member at the time (Ann McCormick), approved of Connor's decision to remove the appointments and voted to confirm the appointment of two new ACC members (Brish and Martin). Further, the appointment of the Chair, Robert "Bob" Kenney, was agreed to and not challenged by any 2015 LCNA board member. Additionally, members of the Lost Creek MUD Board (which served as the enforcement arm of the ACC) had asked Connor to terminate the appointments of the then-serving ACC members. Further, 2015 LCNA Treasurer Sharon Lear had been communicating with Plaintiff and 2014 President Jennifer Lamm about the ACC's misfeasance and malfeasance, and in fact, it was President Lamm who initially criticized the ACC and the actions they had taken with regard to several citizens (e.g., Post and Howitt). Ex. 4. Clearly, then, the decision, which forms the basis of the "censure" was anything but "unilateral."

something unlawful. The defamatory language was clear and reasonably capable of only one meaning. The defamatory language was for no purpose other than to injure Connor's reputation, expose her to public hatred, contempt or ridicule, impeach her honesty, integrity, virtue or reputation and to cause her harm.

17. In reaction to the defamatory "censure" by Defendants, Connor was harassed by others at the LCNA elections held only days later, where she was cat-called, booed, shouted at, mocked, and ridiculed, by all Defendants and others. Due to Defendants' actions, Connor was emotionally devastated and suffered anxiety, worry, sleeplessness, and other physical manifestations of emotional distress. Further, Connor is a member of a small community (Lost Creek), a mother of teenaged children, and was an unpaid volunteer within the neighborhood charitable social organization (LCNA President and former LCNA Vice-President). Accordingly, Defendants' statements have caused her great unnecessary emotional pain and mental suffering.

18. Defendants' statements were not privileged or authorized in any way, and as Connor is a licensed attorney in good standing, the false and unauthorized "censure" is considered *libel per se* under Texas law. Further, the "censure" was published on LCNA.com, a non-private web page, and was therefore, accessible to anyone in the world. Ex. 3. As a direct and proximate result of Defendants' defamatory statements, and their unlawful posting on the world-wide web, Connor has been damaged and such damages were proximately caused by Defendants' libel.

19. Further, Defendants' malicious and intentional acts against Connor impose liability for punitive damages as they were performed with malice and with knowledge of the actual truth. Similarly, Defendants were aware of the risk of harm from their publication of false statements about Connor on a public web site because Connor and another resident warned Defendants that the "censure" was actionable defamation. Ex. 5. Thus, although Defendants were aware of the

risk of harm, they acted with conscious indifference to that risk and with malice toward Connor and nevertheless continued to publish the false statement. As a direct and proximate cause of their actions, they are liable to Connor for punitive damages.

20. Connor brings this defamation per se action against Defendant McCormick within the one-year statute of limitation.

21. McCormick's letter to her employer speaks for itself. It contains multiple and various material falsehoods which negatively affected her position as a lawyer and a candidate for a high-profile position. Obviously, the letter was intended to injure Plaintiff's reputation as a lawyer, as well as to compel her termination from a job she held (Assistant Counsel of the Texas Veterans Commission), or non-selection for a job she wanted (General Counsel of TVC). Accordingly, the falsehoods published by Defendant McCormick are defamatory per se, and punitive damages should attach as the letter was published with malice and with knowledge of the actual truth.

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (E. Hooks) (non-suited)

22. As more fully set out above, Defendant Elizabeth Hooks' intentional and deplorable acts caused Connor severe emotional distress.

23. The elements of the tort of intentional infliction of emotional distress are: 1) the defendant acted intentionally or recklessly; 2) the defendant's conduct was extreme and outrageous; 3) the conduct caused the plaintiff emotional distress; and 4) the emotional distress was severe. *Hoffmann-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004).

24. "Extreme and outrageous" conduct means conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 445; *GTE Sw., Inc. v. Bruce*, 998 S.W.2d

605, 611 (Tex. 1999). Conduct that does not rise to the level of conduct actionable includes insensitive or even rude behavior, mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *See GTE*, 998 S.W.2d at 612. It is for the court to determine, in the first instance, whether a defendant's conduct was extreme and outrageous. *Id.* However, when reasonable minds may differ, it is for the jury to determine whether the conduct was sufficiently extreme and outrageous to result in liability. *Id.*

25. The postings on NextDoor by Elizabeth Hooks were atrocious, gratuitously cruel, and were beyond the bounds of decency, and utterly intolerable in a civilized society. *See id.* The Court should order damages paid to Connor from E. Hooks for her intentional tort. In her posts, some of which are attached as Ex. 2, Defendant Hooks makes unbridled and unprovoked attacks against Connor, a single mother of two young girls (who had school friends in the area served by NextDoor). At that point, Plaintiff did not even know Hooks, other than she was a fellow board-member's wife. The attacks were scathing, uncalled for, and caused Connor, a private individual—merely president of a charitable organization whose primary purpose is to put on annual events, such as a Fourth of July picnic and parade, and a fall barbeque/social. When they were posted, in the middle of the night, Plaintiff's phone "blew up" with calls and emails from friends and neighbors wanting to know why Defendant was lobbing these attacks. Plaintiff suffered emotional distress because she was afraid of what would happen to her kids at school—and that they would be teased and ridiculed. Plaintiff had to field multiple emails and numerous calls to try and "explain" why some random neighbor, not personally known to her, would attack her like that on the internet. Plaintiff suffered fear, worry, anxiety, sleeplessness, depression, loss of appetite, loss of sleep, and continued fears of further attack.

C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Stephenson, D. Hooks, Smith, and McCormick)

26. As more fully explained above, Defendants Stephenson, D. Hooks, and Smith and others, organized a mob to punish Connor for perceived slights against them and others. More precisely, on December 13, 2015, Defendants and others caused an angry mob to appear at the (then) Lost Creek Municipal Utility District building, for the purpose of causing Connor severe emotional distress. As noted above, Defendants and others participated in an action to recall Connor from her position as Lost Creek Neighborhood Association president, for the express reason of filing a lawsuit against the MUD Directors at the time. Having failed at that endeavor, all of the Defendants and others decided to retaliate.[3] All Defendants were present, had an apparently pre-designated and detailed role and speech to read regarding Connor, and overall facilitated an aggressive mob of 125 residents to jeer, shout down, boo, cat call, and laugh at Connor for more than two hours, causing her severe emotional distress. Many residents complained on NextDoor of Connor's treatment by the Defendants and their mob, but their postings were removed by the NextDoor neighborhood "leads," who are friends and/or supporters of the Defendants.

27. Defendant McCormick's letter to Plaintiff's employer was extreme and outrageous, causing Plaintiff severe emotional distress. Naturally, the letter caused Plaintiff to worry that her private clients would think she had been fired previously by an employer where the bulk of her civil rights' and employment experience had been obtained; Plaintiff suffered many sleepless and nightmare-filled nights that she would be fired from the Veterans Commission or passed over for promotion due to the letter (and not on the merits); Plaintiff was unable to eat for a period of time, and suffered frequent headaches, anxiety, and nausea.

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[3] In fact, it was later discovered that former ACC member Wilson Shirley asked a resident shortly before the December 13, 2015, meeting whether the resident was going to the meeting to enjoy "the entertainment."

28. Further, Plaintiff was unable to enjoy aspects of her life that she had once enjoyed; Plaintiff was in constant fear of being ridiculed by other neighbors for having a personality disorder, which was not true; Plaintiff was afraid that colleagues and clients would believe that she had a debilitating personality disorder; Plaintiff was afraid of what else was happening without her knowledge because if McCormick would stoop as low as to write such lies to her boss, it worried her to no end that he was planning (and committing) further injurious attacks.

D. INTERNET DEFAMATION AND LIBEL PER SE, JOHN/JANE DOES 1-16

29. Connor sues Defendants John/Jane Does 1-16 for internet defamation and libel per se on account of a false and defamatory posting discovered on the AVVO website on or about April 14, 2018.[4] Specifically, by pure happenstance, Connor googled herself on or about April 14, 2018, and discovered a fake posting on the AVVO.com website, dated June 1, 2017, by a person purporting to be a former client of Connor's, and complaining of various poor professional in-courtroom services that never happened, bad work product, and that the fake-clients "wasted" their money on Connor's services.

30. Connor contends no such client(s) exists, nor has never existed, and AVVO's business record confirms that the posting was "false." See Ex. 1 (fake review describing "very poor courtroom manners, unpreparedness, poor legal briefing, and sarcastic demeanor before the court, among other made-up assertions). Rather, Connor had never represented any client as purported

[4] "To prevail on a defamation claim, the plaintiff must prove that the defendant (1) published a statement, (2) that was defamatory concerning the plaintiff, (3) while acting with either actual malice, if the plaintiff is a public official or a public figure, or negligence, if the plaintiff is a private individual, regarding the truth of the statement." *See In re Lipsky*, 411 S.W.3d 530, 543-544 (Tex. 2013). "A statement is defamatory if it tends to injure a person's reputation and thereby expose the person to public hatred, contempt, ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation." *See id.* Defamation per se include false remarks that adversely reflect on a person's fitness to conduct his or her business. See id. at 596.

by the imposter who posted the derogatory review—nor has she ever handled client funds in the way described by the fake-client poster. However, a similar non-sarcastic colloquy did in fact take place in this very case (where Connor acted pro se), only twenty days before the fake posting—and in another case (where Connor acted pro se) only two days before the fake posting—involving a suit containing defendants who Connor alleges have worked in concert with the instant defendants to defame, retaliate, and cause Connor severe emotional distress.

31. Connor contends that the fake review constitutes defamation per se, as it describes a false event and it was posted by a false "client," complaining of poor legal decorum and work-product.

VII. REQUEST FOR APOLOGY UNDER DECLARATORY JUDGMENT ACT

32. Connor seeks a declaration under Chapter 37 of the Civil Practices and Remedies Code and the Texas Civil Practices and Remedies Code § 73.003, that the 2015 Board violated its bylaws, Robert's Rules of Order, the agreement subject to this suit, and/or the LCNA's custom by posting the censure on the world-wide web. As such, Plaintiff requests that Megan Marrs, current president of the LCNA, be enjoined in her official capacity, to perform the ministerial act of posting an apology on the LCNA's website (and by first-class mail and constant contact) apologizing to Connor for the 2015 Board's actions in causing her severe emotional distress, and that the censure was materially false, and should have never been posted on the world-wide web, and in any event, should have only been orally announced at the next regularly-called LCNA meeting, as per Robert's Rules of Order and the agreement signed by Plaintiff and the 2015 Board Defendants.

33. Because Plaintiff kept her end of the bargain under the agreement, and did not attempt to serve on the 2016 Board as "past president," which would have been her absolute right, President

Marrs should further be enjoined to publically publish and post that Plaintiff should have been permitted to serve as a board member on the 2016 LCNA board as "past president."

VIII. REQUEST FOR DECLARATORY JUDGMENTAND INJUNCTIVE RELIEF FOR ILLEGAL POLL TAX, IMPROPER USE OF LCNA FUNDS TO CONVERT LOST CREEK MUNICIPAL UTILITY DISTRICT (MUD) INTO ADDITIONAL TAXING AUTHORITY (LIMITED DISTRICT) UPON ANNEXATION, AND ILLEGAL COLLECTION AND EXPENDITURE OF CABLE TAX

34. For more than a decade, Defendant Lost Creek Neighborhood Association through its officers, including but not limited to Stephenson, Smith, Hooks, Marrs, Olen, Hutchison, and Brim, accepted funds from successive cable companies, including Time-Warner Cable, in exchange for a monopoly. The LCNA—which, importantly, is NOT A HOA and had no right to accept those funds or extract those funds from the unsuspecting cable customers—comingled them with the voluntary dues paid by residents. The LCNA is only a 501(c)(4) non-profit organization, which of course, is not authorized to accept those funds or grant a monopoly to the cable companies on behalf of the property owners of Lost Creek. Despite accepting these funds for years, and spending them according to their "current" (paid) members' voting only, the LCNA to this day *charges* residents to vote for LCNA officers and other business brought before the LCNA membership. Thus, while a majority of residents paid into the LCNA through an illegal cable fee, which was assessed for years, residents can only vote if they are "current" members (residents who may vote to elect officers and other important matters) if they pay an additional $60 per year in dues.

35. The LCNA board had no right to accept the cable money and then expend it to construct speed bumps on President Marrs' street.

36. Plaintiff further seeks a declaration that, because the LCNA through its board, had no authority to tax Lost Creek Residents through their cable bills, and because those moneys were comingled with LCNA membership fees, the LCNA's the individual board members' expenditures

of those moneys for infrastructure projects (including speed bumps), "advocacy" projects such as hiring an attorney (to the tune of $30,000.00 in 2014) to "represent the neighborhood" with regard to development of a large, adjacent, and privately owned parcel of land ("Marshall Tract"), is and was an illegal expenditure of funds.

37. Plaintiff has paid cable fees since 2002, and therefore has standing to request the foregoing declaratory relief.

38. Plaintiff sues Defendant USLI for failure to cover and defend the claims against her that arose out of her position and former President of the LCNA Board. Plaintiff seeks a declaration that USLI wrongly denied coverage for the claims brought against her by Stephenson, Smith, Hooks, and Marrs. An insurer has a duty to deal fairly and in good faith with its insured in the processing and payment of claims. *Arnold v. National County Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167 (Tex. 1987). A breach of the duty of good faith and fair dealing is established when there is an absence of a reasonable basis for denying coverage and representation under a policy and the carrier knew or should have known that there was not a reasonable basis for denying the claim or delaying payment of the claim. *See id.* Whether there is a reasonable basis for denial of a claim must be judged by the facts before the insurer at the time the claim was denied. *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 340 (Tex. 1995). Plaintiff claims there was not a reasonable basis to cover and defend Defendants in this action, but refuse the same coverage to Plaintiff as all were parties should have received representation and coverage in this action.

IX. OBJECTION TO ASSOCIATE JUDGE

39. Plaintiff requests that all proceedings be presided over by a duly elected or appointed district judge.

X. CONCLUSION AND PRAYER

40. As a direct and proximate result of the actions of Defendants, and as more succinctly set forth in the causes of the actions as outlined above, Plaintiff Madeleine Connor has suffered damages. Those damages include but are not limited to, declaratory relief as outlined above, injunctive relief as outlined above, emotional distress and mental anguish and the maximum amount of damages sought by Connor is within the jurisdictional limits of this Court. Therefore, Plaintiff prays that the Defendants be cited to appear herein, that upon trial by a jury, the Defendants be held liable for the causes of action pled and a judgment be entered against them awarding Connor all of the following:

1. Actual damages;
2. Consequential damages;
4. Damages for emotional distress and mental anguish;
5. Exemplary damages;
6. Declarations and injunctive relief as outlined above;
7. Pre- and post-judgment interest;
8. Costs of Court;
9. Attorneys' fees (declaratory judgment); and
10. Any other damages or relief she may show herself to be justly entitled.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor
SBOT # 24031897
P.O. Box 161962
Austin, Texas 78716-1962
(512) 289-2424
(512) 329-5229 (fax)
mgbconnor@yahoo.com

CERTIFICIATE OF SERVICE

I certify that this instrument was served by electronic service on the following person on the 26th day of May, 2018: Sherry Rasmus, The Rasmus Firm, 950 Westbank Drive, Suite 202, Austin, TX 78746, 512/481-0650, 512/481-0604 (facsimile), sgrasmus@rasmusfirm.com and Laura Prather at Laura.Prather@haynesboone.com, and Alicia Calzada at Alicia.Calzada@haynesboone.com, Haynes and Boone, LLC, 600

Congress Avenue, Suite 1300, Austin TX 78701, Telephone: (512) 867-8400, Telecopier: (512) 867-8609.

/s/ Madeleine Connor
Madeleine Connor

APPPENDIX 2

CAUSE NO. D-1-GN-16-005883

MADELEINE CONNOR, Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	
MARC STEPHENSON, CLAUDE SMITH, DOUGLAS HOOKS, CHARLES "CHUCK" McCORMICK, MEGAN MARRS, and JANE/JOHN DOES 1-16, Defendants.	§	TRAVIS COUNTY, TEXAS
.	§	200th JUDICIAL DISTRICT COURT

PLAINTIFF'S SIXTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Madeleine Connor, Plaintiff, files this sixth amended original petition complaining of Marc Stephenson, Claude Smith, Douglas Hooks, "Chuck" McCormick, Megan Marrs, and Jane/John Does 1-16, Defendants, and in support thereof would show the following:

I. DISCOVERY LEVEL 2

1. Plaintiff intends discovery in this case to be conducted under Level 2 Discovery, as that is defined in the Texas Rules of Civil Procedure. The Court has entered a Level 3 Docket Control Order.

II. AMOUNT IN CONTROVERSY

2. Plaintiff seeks monetary, declaratory, and injunctive relief within the jurisdictional limits of this court. Plaintiff seeks monetary relief for more than $1,000,000.

III. PARTIES

3. Plaintiff Madeleine Connor is an individual residing in Travis County, Texas.

4. Defendant Marc Stephenson is an individual and 2015 LCNA board member and was served and has answered; Defendant Claude Smith is an individual and 2015 board member and was served and has answered; Chuck McCormick is an individual, and has been served and has answered; Defendant Douglas Hooks is an individual and 2015 LCNA board member, and was served and has answered; Megan Marrs (in her official capacity only) is 2017-18 LCNA's President has been served and has answered; Defendants Jane/John Doe are individuals residing in Austin, Texas, whose identity have not yet been discovered by the time of this amended petition, although based on communications from counsel, two of the persons are believed to be Douglas Hooks and Elizabeth Hooks.

IV. JURISDICTION AND VENUE

5. This is an action for defamation per se, declaratory judgment, injunctive relief, and intentional infliction of emotional distress. As such, this Court has jurisdiction to hear the claims under Texas Law. Venue is proper in this County under §15.002 of the Texas Civil Practice and Remedies Code as all of the events giving rise to Plaintiff's claims occurred.

V. FACTS

6. Madeleine Connor is a residence of Lost Creek, and was a member of the Lost Creek Neighborhood Association. In late 2014, Connor was elected as the President of the Lost Creek Neighborhood Association, after having served as Vice President for part of 2013. Connor was also an appointee as Scribe editor by two former LCNA presidents.

7. After serving only three months as LCNA President, Connor received several complaints about the Architectural Control Committee (ACC) from local public officials (Directors Eric Castro, Nancy Naeve, and Leah Stewart of the Lost Creek Municipal Utility District [MUD]), residents, and the former LCNA President Jenn Lamm. In sum, the complaints charged that the

ACC, then composed of Defendant Smith, Wilson Shirley, and Oksana Belov, had failed to apply the ACC rules evenly throughout the neighborhood, violated standards of practice (such as granting oral approvals, which obviously cause fairness problems with huge ripple effects), were rude to residents, and in general, were abusing their power. Connor took action and investigated the claims, and found them to be valid. Accordingly, under the LCNA Bylaws at the time, Connor terminated the sitting ACC members' appointments, and proffered replacement members for LCNA Board approval.

8. This did not sit well with Stephenson, D. Hooks, and Smith, and they and others retaliated, launching an aggressive campaign of intimidation against Connor. After months of harassment, they and others tried to have Connor removed from her position as President by recall procedure in the LCNA bylaws, but Connor fought back and retained her position. However, on or about December 6, 2015, D. Hooks, and Smith voted to post on the LCNA website a defamatory "censure" against Connor, which contained material untruths, namely that Connor had "unilaterally" removed the ACC members from their positions.[1] Further, Defendants published material falsehoods that Plaintiff had made "unsubstantiated public charges of impropriety against sitting MUD Directors."

As a result of the untrue and inherently pejorative "censure," Connor's reputation as a lawyer has been damaged, as at least one client was concerned enough about it to immediately contact Connor, and subsequently, the "censure" has been highlighted in another lawsuit. Of

[1] Stephenson entered a vote of abstention, but participated in and facilitated the posting of the "censure" on the opening page of the LCNA website. Further, Connor and another resident contacted Stephenson and insisted that he remove the "censure" from the world-wide web, but he did not respond, nor did he remove the "censure" from public viewing. Stephenson finally removed the "censure" from public access on December 21, 2015, at which time, he placed the "censure" on a password-protected page of the LCNA website. Plaintiff is not aware of when the "censure" was ultimately removed from the "members-only" password-protected page.

course, however, as a professional, Connor does not have to show actual damage in order to prevail and receive damages for the defamatory statements. Further, there was no agreement, bylaw, or rule of law or procedure that would allow for the publication of the false "censure" on the world-wide web. Of course, the intent was to unfairly harm Connor to the maximum extent possible.

9. Connor brings this defamation claim against Defendants Stephenson, Hooks, and Smith in their official and individual capacities and within the one-year statute of limitations.

10. On November 22, 2016, Defendant Chuck McCormick published false and defamatory statements against her to her employer—which damages for defamation per se would naturally flow. See Ex. 1. The letter contained material falsehoods so outrageous and hateful, it was not only slanderous, it caused Plaintiff severe emotional distress. "Chuck's letter" to Plaintiff's employer contains the following material falsehoods, and others: that Plaintiff has "borderline personality disorder with histrionic features"; Plaintiff was fired from her job at the Attorney General's Office; that Plaintiff has a vendetta against men; and "who's [sic] sole goal [sic] to further cripple veterans and other disabled citizens...." The letter caused severe emotional distress, in part because, the letter was directed to Plaintiff's supervisor during a period of time that she was being considered for a promotion for or selection to the General Counsel position of the Texas Veterans Commission.

11. On or about December 3, 2017, Defendant LCNA board members illegally diverted LCNA funds to the City of Austin in furtherance of an infrastructure project to construct speed bumps in on the President's (Megan Marrs) street. Plaintiff seeks a declaration that this Board action diverting illegally begotten "tax" funds/cable money is and was illegal. [2]

[2] On information and belief, due to public outcry and disagreement with the decision and related process to expend LCNA funds on the speed bumps on the LCNA President's street, the City of Austin did not accept the funds and subsequently returned the funds to the LCNA.

VI. CAUSES OF ACTION

A. DEFAMATION AND LIBEL PER SE

12. As more fully set forth above, Defendants Stephenson, Hooks, and Smith, made defamatory statements about Connor which were untrue, disparaging, and therefore, damaged the reputation of Connor and caused other damages. [3] Specifically, the publication was entitled a "censure" which is pejorative in nature, and by its nature, indicates (falsely) that Connor had done something unlawful. The defamatory language was clear and reasonably capable of only one meaning. The defamatory language was for no purpose other than to injure Connor's reputation, expose her to public hatred, contempt or ridicule, impeach her honesty, integrity, virtue or reputation and to cause her harm.

13. In reaction to the defamatory "censure" by Defendants, Connor was harassed by others at the LCNA elections held only days later, where she was cat-called, booed, shouted at, mocked, and ridiculed, by all Defendants and others. Due to Defendants' actions, Connor was emotionally devastated and suffered anxiety, worry, sleeplessness, and other physical manifestations of emotional distress. Further, Connor is a member of a small community (Lost Creek), a mother of teenaged children, and was an unpaid volunteer within the neighborhood charitable social organization (LCNA President and former LCNA Vice-President). Accordingly, Defendants' statements have caused her great unnecessary emotional pain and mental suffering.

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[3] One other Board member at the time (Ann McCormick), approved of Connor's decision to remove the appointments and voted to confirm the appointment of two new ACC members (Brish and Martin). Further, the appointment of the Chair, Robert "Bob" Kenney, was agreed to and not challenged by any 2015 LCNA board member. Additionally, members of the Lost Creek MUD Board (which served as the enforcement arm of the ACC) had asked Connor to terminate the appointments of the then-serving ACC members. Further, 2015 LCNA Treasurer Sharon Lear had been communicating with Plaintiff and 2014 President Jennifer Lamm about the ACC's misfeasance and malfeasance, and in fact, it was President Lamm who initially criticized the ACC and the actions they had taken with regard to several citizens (e.g., Post and Howitt). Ex. 2. Clearly, then, the decision, which forms the basis of the "censure" was anything but "unilateral."

14. Defendants' statements were not privileged or authorized in any way, and as Connor is a licensed attorney in good standing, the false and unauthorized "censure" is considered *libel per se* under Texas law. Further, the "censure" was published on LCNA.com, a non-private web page, and was therefore, accessible to anyone in the world. Ex. 3. As a direct and proximate result of Defendants' defamatory statements, and their unlawful posting on the world-wide web, Connor has been damaged and such damages were proximately caused by Defendants' libel.

15. Further, Defendants' malicious and intentional acts against Connor impose liability for punitive damages as they were performed with malice and with knowledge of the actual truth. Similarly, Defendants were aware of the risk of harm from their publication of false statements about Connor on a public web site because Connor and another resident warned Defendants that the "censure" was actionable defamation. Ex. 4. Thus, although Defendants were aware of the risk of harm, they acted with conscious indifference to that risk and with malice toward Connor and nevertheless continued to publish the false statement. As a direct and proximate cause of their actions, they are liable to Connor for punitive damages.

16. Connor brings this defamation per se action against Defendant McCormick within the one-year statute of limitation.

17. McCormick's letter to Connor's employer speaks for itself. Ex. 1. It contains multiple and various material falsehoods which negatively affected her position as a lawyer and a candidate for a high-profile position. Obviously, the letter was intended to injure Plaintiff's reputation as a lawyer, as well as to compel her termination from a job she held (Assistant Counsel of the Texas Veterans Commission), or non-selection for a job she wanted (General Counsel of TVC). Accordingly, the falsehoods published by Defendant McCormick are defamatory per se, and

punitive damages should attach as the letter was published with malice and with knowledge of the actual truth.

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Stephenson, Hooks, Smith, and McCormick)

18. The elements of the tort of intentional infliction of emotional distress are: 1) the defendant acted intentionally or recklessly; 2) the defendant's conduct was extreme and outrageous; 3) the conduct caused the plaintiff emotional distress; and 4) the emotional distress was severe. *Hoffmann-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004). "Extreme and outrageous" conduct means conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 445; *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 611 (Tex. 1999). Conduct that does not rise to the level of conduct actionable includes insensitive or even rude behavior, mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *GTE*, 998 S.W.2d at 612. It is for the court to determine, in the first instance, whether a defendant's conduct was extreme and outrageous. *Id.* But, when reasonable minds may differ, it is for the jury to determine whether the conduct was sufficiently extreme and outrageous to result in liability. *Id.*

19. As more fully explained above, Defendants Stephenson, Hooks, and Smith and others, organized a mob to punish Connor for perceived slights against them and others. More precisely, on December 13, 2015, Defendants and others caused an angry mob to appear at the (then) Lost Creek Municipal Utility District building, for the purpose of causing Connor severe emotional distress. As noted above, Defendants and others participated in an action to recall Connor from her position as Lost Creek Neighborhood Association president, for the express reason of filing a lawsuit against the MUD Directors at the time. Having failed at that endeavor, all of the

Defendants and others decided to retaliate.[4] All Defendants were present, had an apparently pre-designated and detailed role and speech to read regarding Connor, and overall facilitated an aggressive mob of 125 residents to jeer, shout down, boo, cat call, and laugh at Connor for more than two hours, causing her severe emotional distress. Many residents complained on NextDoor of Connor's treatment by the Defendants and their mob, but their postings were removed by the NextDoor neighborhood "leads," who are friends and/or supporters of the Defendants.

20. Defendant McCormick's letter to Plaintiff's employer was extreme and outrageous, causing Plaintiff severe emotional distress. Naturally, the letter caused Plaintiff to worry that her private clients would think she had been fired previously by an employer where the bulk of her civil rights' and employment experience had been obtained; Plaintiff suffered many sleepless and nightmare-filled nights that she would be fired from the Veterans Commission or passed over for promotion due to the letter (and not on the merits); Plaintiff was unable to eat for a period of time, and suffered frequent headaches, anxiety, and nausea.

21. Further, Plaintiff was unable to enjoy aspects of her life that she had once enjoyed; Plaintiff was in constant fear of being ridiculed by other neighbors for having a personality disorder, which was not true; Plaintiff was afraid that colleagues and clients would believe that she had a debilitating personality disorder; Plaintiff was afraid of what else was happening without her knowledge because if McCormick would stoop as low as to write such lies to her boss, it worried her to no end that he was planning (and committing) further injurious attacks.

[4] In fact, it was later discovered that former ACC member Wilson Shirley asked a resident shortly before the December 13, 2015, meeting whether the resident was going to the meeting to enjoy "the entertainment."

C. INTERNET DEFAMATION, REPUTATIONAL HARM, AND LIBEL PER SE (JOHN/JANE DOES 1-16)

22. Connor sues Defendants John/Jane Does 1-16 for internet defamation and libel per se on account of a false and defamatory posting discovered on the AVVO website on or about April 14, 2018.[5] Specifically, by pure happenstance, Connor googled herself on or about April 14, 2018, and discovered a fake posting on the AVVO.com website, dated June 1, 2017, by a person purporting to be a former client of Connor's, and complaining of various poor professional in-courtroom services that never happened, bad work product, and that the fake-clients "wasted" their money on Connor's services.

23. Connor contends no such client(s) exists, nor has never existed, and AVVO's business record confirms that the posting was "false." See Ex. 5 (fake AVVO review describing "very poor courtroom manners, unpreparedness, poor legal briefing, and sarcastic demeanor before the court, among other made-up assertions). Rather, Connor had never represented any client as purported by the imposter who posted the derogatory review—nor has she ever handled client funds in the way described by the fake-client poster. However, a similar non-sarcastic colloquy did in fact take place in this very case (where Connor acted pro se), only twenty days before the fake posting—and in another case (where Connor acted pro se) only two days before the fake posting—involving

[5] "To prevail on a defamation claim, the plaintiff must prove that the defendant (1) published a statement, (2) that was defamatory concerning the plaintiff, (3) while acting with either actual malice, if the plaintiff is a public official or a public figure, or negligence, if the plaintiff is a private individual, regarding the truth of the statement." *See In re Lipsky*, 411 S.W.3d 530, 543-544 (Tex. 2013). "A statement is defamatory if it tends to injure a person's reputation and thereby expose the person to public hatred, contempt, ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation." *See id.* Defamation per se include false remarks that adversely reflect on a person's fitness to conduct his or her business. *See id.* at 596.

a suit containing defendants who Connor alleges have worked in concert with the instant defendants to defame, retaliate, and cause Connor severe emotional distress.

24. Connor contends that the fake review constitutes defamation per se, as it describes a false event and it was posted by a false "client," complaining of poor legal decorum and work-product.

VII. REQUEST FOR APOLOGY UNDER DECLARATORY JUDGMENT ACT

25. Connor seeks a declaration under Chapter 37 of the Civil Practices and Remedies Code and the Texas Civil Practices and Remedies Code § 73.003, that the 2015 Board violated its bylaws, Robert's Rules of Order, the agreement subject to this suit, and/or the LCNA's custom by posting the censure on the world-wide web. As such, Plaintiff requests that Megan Marrs, current president of the LCNA, be enjoined in her official capacity, to perform the ministerial act of posting an apology on the LCNA's website (and by first-class mail and constant contact) apologizing to Connor for the 2015 Board's actions in causing her severe emotional distress, and that the censure was materially false, and should have never been posted on the world-wide web, and in any event, should have only been orally announced at the next regularly-called LCNA meeting, as per Robert's Rules of Order and the agreement signed by Plaintiff and the 2015 Board Defendants.

26. Because Plaintiff kept her end of the bargain under the agreement, and did not attempt to serve on the 2016 Board as "past president," which would have been her absolute right, President Marrs should further be enjoined to publicly publish and post that Plaintiff should have been permitted to serve as a board member on the 2016 LCNA board as "past president."

VIII. OBJECTION TO ASSOCIATE JUDGE

27. Plaintiff requests that all proceedings be presided over by a duly elected or appointed district judge.

IX. CONCLUSION AND PRAYER

28. As a direct and proximate result of the actions of Defendants, and as more succinctly set forth in the causes of the actions as outlined above, Plaintiff Madeleine Connor has suffered damages. Those damages include but are not limited to, declaratory relief as outlined above, injunctive relief as outlined above, emotional distress and mental anguish and the maximum amount of damages sought by Connor is within the jurisdictional limits of this Court. Therefore, Plaintiff prays that the Defendants be cited to appear herein, that upon trial by a jury, the Defendants be held liable for the causes of action pled and a judgment be entered against them awarding Connor all of the following:

1. Actual damages;
2. Consequential damages;
4. Damages for emotional distress and mental anguish;
5. Exemplary damages;
6. Declarations and injunctive relief as outlined above;
7. Pre- and post-judgment interest;
8. Costs of Court;
9. Attorneys' fees (declaratory judgment); and
10. Any other damages or relief she may show herself to be justly entitled.

Respectfully submitted,

/s/ Madeleine Connor

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CERTIFICATE OF SERVICE

I certify that this instrument was served by electronic service on the following person on the 31st day of July, 2018: Sherry Rasmus, The Rasmus Firm, P. O. Box 1484, Manchaca, TX, 78652-1484, 512/481-0650, 512/481-0604 (facsimile), sgrasmus@rasmusfirm.com.

/s/ Madeleine Connor
Madeleine Connor

APPPENDIX 3

CAUSE NO. D-1-GN-18-006079

MADELEINE CONNOR, Plaintiff vs. MARC STEPHENSON, CLAUDE SMITH, DOUGLAS HOOKS, CHARLES "CHUCK" McCORMICK, MEGAN MARRS, NEXTDOOR.COM INC., JANE/JOHN DOES 1-14, (FORMER JANE/JOHN DOES) DOUGLAS AND ELIZABETH HOOKS, Defendants. .	§ § § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 419TH JUDICIAL DISTRICT COURT

PLAINTIFF'S SEVENTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Madeleine Connor, Plaintiff, files this seventh amended original petition complaining of Marc Stephenson, Claude Smith, Douglas Hooks, "Chuck" McCormick, Megan Marrs, Next Door.com Inc, and Jane/John Does 1-16, Former Jane/John Does 14-15, Douglas and Elizabeth Hooks, Defendants, and in support thereof would show the following:

I. DISCOVERY LEVEL 2

1. Plaintiff intends discovery in this case to be conducted under Level 2 Discovery, as that is defined in the Texas Rules of Civil Procedure.

II. AMOUNT IN CONTROVERSY

2. Plaintiff seeks monetary, declaratory, and injunctive relief within the jurisdictional limits of this court. Plaintiff seeks monetary relief for more than $1,000,000.

III. PARTIES

3. Plaintiff Madeleine Connor is an individual residing in Travis County, Texas.

4. Defendant Marc Stephenson is an individual and 2015 LCNA board member and was served and has answered; Defendant Claude Smith is an individual and 2015 board member and was served and has answered; Chuck McCormick is an individual, and has been served and has answered; Defendant Douglas Hooks is an individual and 2015 LCNA board member, and was served and has answered; Megan Marrs (in her official capacity only) is 2017-18 LCNA's President has been served and has answered; Defendant NextDoor.com Inc., Nextdoor.com, Inc., is located at 875 Stevenson St., San Francisco, CA 94103, and may be served by its Chief Executive Officer, Nirav Tolia at 875 Stevenson St., San Francisco, CA 94103; Defendants Jane/John Doe 1-14 are individuals residing in Austin, Texas, whose identity have not yet been discovered by the time of this amended petition; Former Jane/John Does (15 & 16), Douglas Hooks and Elizabeth Hooks are individuals residing at 6401 Royal Birkdale Overlook, Austin, Texas, 78746, and may be served at 6401 Royal Birkdale Overlook, Austin, Texas, 78746.

IV. JURISDICTION AND VENUE

5. This is an action for defamation per se, declaratory judgment, injunctive relief, and intentional infliction of emotional distress. As such, this Court has jurisdiction to hear the claims under Texas Law. Venue is proper in this County under §15.002 of the Texas Civil Practice and Remedies Code as all of the events giving rise to Plaintiff's claims occurred.

V. FACTS

6. Madeleine Connor is a residence of Lost Creek, and was a member of the Lost Creek Neighborhood Association. In late 2014, Connor was elected as the President of the Lost Creek Neighborhood Association, after having served as Vice President for part of 2013. Connor was also an appointee as Scribe editor by two former LCNA presidents.

7. After serving only three months as LCNA President, Connor received several complaints about the Architectural Control Committee (ACC) from local public officials (Directors Eric Castro, Nancy Naeve, and Leah Stewart of the Lost Creek Municipal Utility District [MUD]), residents, and the former LCNA President Jenn Lamm. In sum, the complaints charged that the ACC, then composed of Defendant Smith, Wilson Shirley, and Oksana Belov, had failed to apply the ACC rules evenly throughout the neighborhood, violated standards of practice (such as granting oral approvals, which obviously cause fairness problems with huge ripple effects), were rude to residents, and in general, were abusing their power. Connor took action and investigated the claims, and found them to be valid. Accordingly, under the LCNA Bylaws at the time, Connor terminated the sitting ACC members' appointments, and proffered replacement members for LCNA Board approval.

8. This did not sit well with Stephenson, D. Hooks, and Smith, and they and others retaliated, launching an aggressive campaign of intimidation against Connor. After months of harassment, they and others tried to have Connor removed from her position as President by recall procedure in the LCNA bylaws, but Connor fought back and retained her position. However, on or about December 6, 2015, D. Hooks, and Smith voted to post on the LCNA website a defamatory "censure" against Connor, which contained material untruths, namely that Connor had "unilaterally" removed the ACC members from their positions.[1] Further, Defendants published

[1] Stephenson entered a vote of abstention, but participated in and facilitated the posting of the "censure" on the opening page of the LCNA website. Further, Connor and another resident contacted Stephenson and insisted that he remove the "censure" from the world-wide web, but he did not respond, nor did he remove the "censure" from public viewing. Stephenson finally removed the "censure" from public access on December 21, 2015, at which time, he placed the "censure" on a password-protected page of the LCNA website. Plaintiff is not aware of when the "censure" was ultimately removed from the "members-only" password-protected page.

material falsehoods that Plaintiff had made "unsubstantiated public charges of impropriety against sitting MUD Directors."

As a result of the untrue and inherently pejorative "censure," Connor's reputation as a lawyer has been damaged, as at least one client was concerned enough about it to immediately contact Connor, and subsequently, the "censure" has been highlighted in another lawsuit. Of course, however, as a professional, Connor does not have to show actual damage in order to prevail and receive damages for the defamatory statements. Further, there was no agreement, bylaw, or rule of law or procedure that would allow for the publication of the false "censure" on the world-wide web. Of course, the intent was to unfairly harm Connor to the maximum extent possible.

9. Connor brings this defamation claim against Defendants Stephenson, Hooks, and Smith in their official and individual capacities and within the one-year statute of limitations.

10. On November 22, 2016, Defendant Chuck McCormick published false and defamatory statements against her to her employer—which damages for defamation per se would naturally flow. See Ex. 1. The letter contained material falsehoods so outrageous and hateful, it was not only slanderous, it caused Plaintiff severe emotional distress. "Chuck's letter" to Plaintiff's employer contains the following material falsehoods, and others: that Plaintiff has "borderline personality disorder with histrionic features"; Plaintiff was fired from her job at the Attorney General's Office; that Plaintiff has a vendetta against men; and "who's [sic] sole goal [sic] to further cripple veterans and other disabled citizens...." The letter caused severe emotional distress, in part because, the letter was directed to Plaintiff's supervisor during a period of time that she was being considered for a promotion for or selection to the General Counsel position of the Texas Veterans Commission.

11. On or about December 3, 2017, Defendant LCNA board members illegally diverted LCNA funds to the City of Austin in furtherance of an infrastructure project to construct speed bumps in on the President's (Megan Marrs) street. Plaintiff seeks a declaration that this Board action diverting illegally begotten "tax" funds/cable money is and was illegal. [2]

VI. CAUSES OF ACTION

A. DEFAMATION AND LIBEL PER SE

12. As more fully set forth above, Defendants Stephenson, Hooks, and Smith, made defamatory statements about Connor which were untrue, disparaging, and therefore, damaged the reputation of Connor and caused other damages. [3] Specifically, the publication was entitled a "censure" which is pejorative in nature, and by its nature, indicates (falsely) that Connor had done something unlawful. The defamatory language was clear and reasonably capable of only one meaning. The defamatory language was for no purpose other than to injure Connor's reputation, expose her to public hatred, contempt or ridicule, impeach her honesty, integrity, virtue or reputation and to cause her harm.

13. In reaction to the defamatory "censure" by Defendants, Connor was harassed by others at the LCNA elections held only days later, where she was cat-called, booed, shouted at, mocked,

---

[2] On information and belief, due to public outcry and disagreement with the decision and related process to expend LCNA funds on the speed bumps on the LCNA President's street, the City of Austin did not accept the funds and subsequently returned the funds to the LCNA.

[3] One other Board member at the time (Ann McCormick), approved of Connor's decision to remove the appointments and voted to confirm the appointment of two new ACC members (Brish and Martin). Further, the appointment of the Chair, Robert "Bob" Kenney, was agreed to and not challenged by any 2015 LCNA board member. Additionally, members of the Lost Creek MUD Board (which served as the enforcement arm of the ACC) had asked Connor to terminate the appointments of the then-serving ACC members. Further, 2015 LCNA Treasurer Sharon Lear had been communicating with Plaintiff and 2014 President Jennifer Lamm about the ACC's misfeasance and malfeasance, and in fact, it was President Lamm who initially criticized the ACC and the actions they had taken with regard to several citizens (e.g., Post and Howitt). Ex. 2. Clearly, then, the decision, which forms the basis of the "censure" was anything but "unilateral."

and ridiculed, by all Defendants and others. Due to Defendants' actions, Connor was emotionally devastated and suffered anxiety, worry, sleeplessness, and other physical manifestations of emotional distress. Further, Connor is a member of a small community (Lost Creek), a mother of teenaged children, and was an unpaid volunteer within the neighborhood charitable social organization (LCNA President and former LCNA Vice-President). Accordingly, Defendants' statements have caused her great unnecessary emotional pain and mental suffering.

14. Defendants' statements were not privileged or authorized in any way, and as Connor is a licensed attorney in good standing, the false and unauthorized "censure" is considered *libel per se* under Texas law. Further, the "censure" was published on LCNA.com, a non-private web page, and was therefore, accessible to anyone in the world. Ex. 3. As a direct and proximate result of Defendants' defamatory statements, and their unlawful posting on the world-wide web, Connor has been damaged and such damages were proximately caused by Defendants' libel.

15. Further, Defendants' malicious and intentional acts against Connor impose liability for punitive damages as they were performed with malice and with knowledge of the actual truth. Similarly, Defendants were aware of the risk of harm from their publication of false statements about Connor on a public web site because Connor and another resident warned Defendants that the "censure" was actionable defamation. Ex. 4. Thus, although Defendants were aware of the risk of harm, they acted with conscious indifference to that risk and with malice toward Connor and nevertheless continued to publish the false statement. As a direct and proximate cause of their actions, they are liable to Connor for punitive damages.

16. Connor brings this defamation per se action against Defendant McCormick within the one-year statute of limitation.

17. McCormick's letter to Connor's employer speaks for itself. Ex. 1. It contains multiple and various material falsehoods which negatively affected her position as a lawyer and a candidate for a high-profile position. Obviously, the letter was intended to injure Plaintiff's reputation as a lawyer, as well as to compel her termination from a job she held (Assistant Counsel of the Texas Veterans Commission), or non-selection for a job she wanted (General Counsel of TVC). Accordingly, the falsehoods published by Defendant McCormick are defamatory per se, and punitive damages should attach as the letter was published with malice and with knowledge of the actual truth.

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Stephenson, Hooks, Smith, and McCormick)

18. The elements of the tort of intentional infliction of emotional distress are: 1) the defendant acted intentionally or recklessly; 2) the defendant's conduct was extreme and outrageous; 3) the conduct caused the plaintiff emotional distress; and 4) the emotional distress was severe. *Hoffmann-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004). "Extreme and outrageous" conduct means conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 445; *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 611 (Tex. 1999). Conduct that does not rise to the level of conduct actionable includes insensitive or even rude behavior, mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *GTE*, 998 S.W.2d at 612. It is for the court to determine, in the first instance, whether a defendant's conduct was extreme and outrageous. *Id.* But, when reasonable minds may differ, it is for the jury to determine whether the conduct was sufficiently extreme and outrageous to result in liability. *Id.*

19. As more fully explained above, Defendants Stephenson, Hooks, and Smith and others, organized a mob to punish Connor for perceived slights against them and others. More precisely,

on December 13, 2015, Defendants and others caused an angry mob to appear at the (then) Lost Creek Municipal Utility District building, for the purpose of causing Connor severe emotional distress. As noted above, Defendants and others participated in an action to recall Connor from her position as Lost Creek Neighborhood Association president, for the express reason of filing a lawsuit against the MUD Directors at the time. Having failed at that endeavor, all of the Defendants and others decided to retaliate.[4] All Defendants were present, had an apparently pre-designated and detailed role and speech to read regarding Connor, and overall facilitated an aggressive mob of 125 residents to jeer, shout down, boo, cat call, and laugh at Connor for more than two hours, causing her severe emotional distress. Many residents complained on NextDoor of Connor's treatment by the Defendants and their mob, but their postings were removed by the NextDoor neighborhood "leads," who are friends and/or supporters of the Defendants.

20. Defendant McCormick's letter to Plaintiff's employer was extreme and outrageous, causing Plaintiff severe emotional distress. Naturally, the letter caused Plaintiff to worry that her private clients would think she had been fired previously by an employer where the bulk of her civil rights' and employment experience had been obtained; Plaintiff suffered many sleepless and nightmare-filled nights that she would be fired from the Veterans Commission or passed over for promotion due to the letter (and not on the merits); Plaintiff was unable to eat for a period of time, and suffered frequent headaches, anxiety, and nausea.

21. Further, Plaintiff was unable to enjoy aspects of her life that she had once enjoyed; Plaintiff was in constant fear of being ridiculed by other neighbors for having a personality disorder, which was not true; Plaintiff was afraid that colleagues and clients would believe that she had a

[4] In fact, it was later discovered that former ACC member Wilson Shirley asked a resident shortly before the December 13, 2015, meeting whether the resident was going to the meeting to enjoy "the entertainment."

debilitating personality disorder; Plaintiff was afraid of what else was happening without her knowledge because if McCormick would stoop as low as to write such lies to her boss, it worried her to no end that he was planning (and committing) further injurious attacks.

C. INTERNET DEFAMATION, REPUTATIONAL HARM, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND LIBEL PER SE (JOHN/JANE DOES 1-14 and DOUGLAS AND ELIZABETH HOOKS, FORMER JANE/JOHN DOES 15 & 16)

22. Connor sues Defendants John/Jane Does 1-14, Douglas Hooks and Elizabeth Hooks for internet defamation and libel per se on account of a false and defamatory posting discovered on the AVVO website on or about April 14, 2018.[5] Specifically, by pure happenstance, Connor googled herself on or about April 14, 2018, and discovered a fake posting on the AVVO.com website, dated June 1, 2017, by a person purporting to be a former client of Connor's, and complaining of various poor professional in-courtroom services that never happened, bad work product, and that the fake-clients "wasted" their money on Connor's services.

23. Connor contends no such client(s) exists, nor has never existed, and AVVO's business record confirms that the posting was "false." See Ex. 5 (fake AVVO review describing "very poor courtroom manners, unpreparedness, poor legal briefing, and sarcastic demeanor before the court, among other made-up assertions). Rather, Connor had never represented any client as purported by the imposter who posted the derogatory review—nor has she ever handled client funds in the way described by the fake-client poster. However, a similar non-sarcastic colloquy did in fact take

[5] "To prevail on a defamation claim, the plaintiff must prove that the defendant (1) published a statement, (2) that was defamatory concerning the plaintiff, (3) while acting with either actual malice, if the plaintiff is a public official or a public figure, or negligence, if the plaintiff is a private individual, regarding the truth of the statement." *See In re Lipsky*, 411 S.W.3d 530, 543-544 (Tex. 2013). "A statement is defamatory if it tends to injure a person's reputation and thereby expose the person to public hatred, contempt, ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation." *See id.* Defamation per se include false remarks that adversely reflect on a person's fitness to conduct his or her business. *See id.* at 596.

place in this very case (where Connor acted pro se), only twenty days before the fake posting—and in another case (where Connor acted pro se) only two days before the fake posting—involving a suit containing defendants who Connor alleges have worked in concert with the instant defendants to defame, retaliate, and cause Connor severe emotional distress.

24. Connor contends that the fake review constitutes defamation per se, as it describes a false event and it was posted by a false "client," complaining of poor legal decorum and work-product.

25. Connor contends that the fake review constitutes intentional infliction of emotional distress.

26. Connor has discovered evidence since the filing of the last live pleading that the AVVO false, distressing, and defamatory posting was transmitted from the IP address of Douglas and Elizabeth Hooks.

VII. REQUEST FOR APOLOGY UNDER DECLARATORY JUDGMENT ACT

27. Connor seeks a declaration under Chapter 37 of the Civil Practices and Remedies Code and the Texas Civil Practices and Remedies Code § 73.003, that the 2015 Board violated its bylaws, Robert's Rules of Order, the agreement subject to this suit, and/or the LCNA's custom by posting the censure on the world-wide web. As such, Plaintiff requests that Megan Marrs, current president of the LCNA, be enjoined in her official capacity, to perform the ministerial act of posting an apology on the LCNA's website (and by first-class mail and constant contact) apologizing to Connor for the 2015 Board's actions in causing her severe emotional distress, and that the censure was materially false, and should have never been posted on the world-wide web, and in any event, should have only been orally announced at the next regularly-called LCNA meeting, as per Robert's Rules of Order and the agreement signed by Plaintiff and the 2015 Board Defendants.

28. Because Plaintiff kept her end of the bargain under the agreement, and did not attempt to serve on the 2016 Board as "past president," which would have been her absolute right, President Marrs should further be enjoined to publicly publish and post that Plaintiff should have been permitted to serve as a board member on the 2016 LCNA board as "past president."

D. REQUEST FOR DECLARATORY JUDGMENT: NEXTDOOR.COM, INC.: TEXAS CONSTITUTIONAL VIOLATIONS OF FREEDOM OF SPEECH AND CONTENT-BASED CENSORSHIP OF SPEECH

29. Connor contends that she was banned from the social networking website—NextDoor—for posting political commentary and factual statements about candidates associated with and working in concert with other defendants in this suit. Also, prior to being completely banned for content-based civil speech, Connor's posted responses to other defendant's NextDoor platform-based attacks in this lawsuit were removed, leaving the impression that Connor agreed with the derogatory comments of others. Accordingly, Connor requests a declaration from the Court that NextDoor, through its local leads, including but not limited to Sharon Lear and Dave Bair, engaged in content-based abridgement of Connor's speech, and that NextDoor, through its leads and others, unevenly applies its standards to target, retaliate, and punish speakers and speech that it disagrees with politically or personally, and that these actions violate the Texas Constitution's guarantees to freedom speech. See Tex. Const. Art I, § 8.

VIII. OBJECTION TO ASSOCIATE JUDGE

30. Plaintiff requests that all proceedings be presided over by a duly elected or appointed district judge.

IX. CONCLUSION AND PRAYER

31. As a direct and proximate result of the actions of Defendants, and as more succinctly set forth in the causes of the actions as outlined above, Plaintiff Madeleine Connor has suffered

damages. Those damages include but are not limited to, declaratory relief as outlined above, injunctive relief as outlined above, emotional distress and mental anguish and the maximum amount of damages sought by Connor is within the jurisdictional limits of this Court. Therefore, Plaintiff prays that the Defendants be cited to appear herein, that upon trial by a jury, the Defendants be held liable for the causes of action pled and a judgment be entered against them awarding Connor all of the following:

1. Actual damages;
2. Consequential damages;
4. Damages for emotional distress and mental anguish;
5. Exemplary damages;
6. Declarations and injunctive relief as outlined above;
7. Pre- and post-judgment interest;
8. Costs of Court;
9. Attorneys' fees (declaratory judgment); and
10. Any other damages or relief she may show herself to be justly entitled.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor
SBOT # 24031897
P.O. Box 161962
Austin, Texas 78716-1962
(512) 289-2424
(512) 329-5229 (fax)
mgbconnor@yahoo.com

CERTIFICATE OF SERVICE

I certify that this instrument was served by electronic service on the following person on the 18st day of November, 2018: Sherry Rasmus, The Rasmus Firm, P. O. Box 1484, Manchaca, TX, 78652-1484, 512/481-0650, 512/481-0604 (facsimile), sgrasmus@rasmusfirm.com.

/s/ Madeleine Connor
Madeleine Connor

APPPENDIX 4

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00750-CV

Madeleine Connor, Appellant

v.

Marc Stephenson, Claude Smith, Douglas Hooks, and Megan Marrs, Appellees[1]

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT
NO. D-1-GN-18-006079, HONORABLE ERIC SHEPPERD, JUDGE PRESIDING

MEMORANDUM OPINION

In this appeal, arising out of a homeowners' association dispute, appellant Madeleine Connor filed her notice of appeal on November 8, 2018, seeking to appeal from various orders signed by the trial court that dismissed her claims against appellees Marc Stephenson, Claude Smith, Douglas Hooks, and Megan Marrs. Because Connor's notice of appeal was filed too late, as we will explain below, we have no choice but to dismiss the appeal for want of jurisdiction.

Connor sued appellees and numerous other parties, asserting claims for defamation, libel, and intentional infliction of emotional distress. Her lawsuit was docketed under trial court cause number D-1-GN-16-005883. In May and October 2017, the trial court signed separate orders

[1] Connor did not actually list Douglas Hooks as an appellee in her notice of appeal, but she has included him as an appellee in her other filings. Because we are dismissing the appeal for want of jurisdiction, we will include him as an appellee without any discussion of whether can be considered a party to this appeal. Connor also named Charles "Chuck" McCormick as an appellee, but because, as explained below, the trial court signed a severance order, he was not a party to the underlying case and is not a proper appellee in this cause.

dismissing Connor's claims against appellees pursuant to the Texas Citizens Participation Act (TCPA). *See* Tex. Civ. Prac. & Rem. Code §§ 27.007-.011. Because Connor's claims against various other defendants were still pending, those orders were interlocutory and not appealable. *See Trane US, Inc. v. Sublett*, 501 S.W.3d 783, 787 (Tex. App.—Amarillo 2016, no pet.).

On September 25, 2018, the trial court signed an order severing Connor's claims against appellees into new trial court cause number D-1-GN-18-006079. Connor's claims against Charles "Chuck" McCormick and various other defendants remained in the original cause number. Thus, despite Connor naming McCormick as an appellee in this cause, the claims against him were not part of the severed action, and he is not a proper party to this appeal.

Upon the signing of that severance order, the interlocutory orders dismissing Connor's claims against appellees became final. *See, e.g.*, *Diversified Fin. Sys., Inc. v. Hill, Heard, O'Neal, Gilstrap & Goetz, P.C.*, 63 S.W.3d 795, 795 (Tex. 2001) (per curiam) ("As a rule, the severance of an interlocutory judgment into a separate cause makes it final."); *Arlitt v. Ebeling*, No. 03-18-00646-CV, 2018 WL 6496714, at *3 (Tex. App.—Austin Dec. 11, 2018, no pet. h.) (mem. op.) ("the orders that Arlitt has attempted to appeal in this case were final on April 4, 2018, when the trial court signed the severance orders"). Although both Connor and appellees have since filed responses in this Court asserting that Connor's filing of a seventh amended petition[2] on November 8, 2018, had the effect making the dismissal orders "no longer final," we disagree. The severance order was signed on September 25, 2018, and the trial court's plenary power expired thirty

[2] Connor's seventh amended petition, filed in the severed cause number, names appellees as defendants but then also names as defendants parties who she had already sued in the original cause—McCormick and "Jane/John Does 1-14"—as well as Nextdoor.com Inc., a new defendant.

days later, on October 25. *See* Tex. R. Civ. P. 329b. Thus, Connor's petition, filed after the trial court's plenary power had expired, was of no effect and did not somehow operate to "unfinalize" the dismissals, which became final when the severance order was signed. *See Offord v. West Hous. Trees, Ltd.*, No. 14-16-00532-CV, 2018 WL 1866044, at *2 & n.3 (Tex. App.—Houston [14th Dist.] Apr. 19, 2018, no pet.) (mem. op.) ("Because appellants did not file a notice of appeal or a motion extending the trial court's plenary power, the January 11, 2016 severance order made the sanctions award final, . . . the trial court's plenary power expired thirty days later," and petition filed after that date "had no effect because it was filed after the trial court's plenary power expired."). Thus, the time to file a notice of appeal began running on the date the severance order was signed.

"An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action" under the TCPA. Tex. Civ. Prac. & Rem. Code § 27.008(a). Any appeal "required by statute to be accelerated or expedited" is considered an "accelerated appeal." Tex. R. App. P. 28.1(a). "[I]n an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed." *Id.* R. 26.1(b); *see also id.* R. 28.1(b) ("[A]n accelerated appeal is perfected by filing a notice of appeal . . . within the time allowed by Rule 26.1(b) or as extended by Rule 26.3.").

Connor's deadline to file her notice of appeal was October 15, 2018, twenty days after the signing of the severance order on September 25. *See id.* R. 26.1(b). The very latest this Court could extend the deadline was October 30, fifteen days later. *See id.* R. 26.3. Connor's notice of appeal, filed more than a week later, was untimely, and we therefore may not exercise jurisdiction over the appeal. We dismiss the appeal for want of jurisdiction. *See id.* R. 42.3(a).

Cindy Olson Bourland, Justice

Before Justices Puryear, Goodwin, and Bourland

Dismissed for Want of Jurisdiction

Filed: December 28, 2018

APPPENDIX 5

FILE COPY

RE: Case No. 19-0226 DATE: 4/26/2019
COA #: 03-18-00750-CV TC#: D-1-GN-18-006079
STYLE: CONNOR v. STEPHENSON

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

DISTRICT CLERK TRAVIS COUNTY
TRAVIS COUNTY COURT
P. O. BOX 679003
AUSTIN, TX 78767
* DELIVERED VIA E-MAIL *

APPPENDIX 6

FILE COPY

MANDATE

THE STATE OF TEXAS

TO THE 419TH DISTRICT COURT OF TRAVIS COUNTY, GREETINGS:

Trial Court Cause No. D-1-GN-18-006079

Before our Court of Appeals for the Third District of Texas on December 28, 2018, the cause on appeal to revise or reverse your judgment between

Madeleine Connor

No. 03-18-00750-CV v.

Marc Stephenson, Claude Smith, Douglas Hooks, and Megan Marrs

Was determined, and therein our Court of Appeals made its order in these words

This is an appeal from the orders signed by the trial court. Having reviewed the record, it appears that the Court lacks jurisdiction over the appeal. Therefore, the Court dismisses the appeal for want of jurisdiction. The appellant shall pay all costs relating to this appeal, both in this Court and in the court below.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.

COURT OF APPEALS * OF THE STATE OF TEXAS *

Witness the Honorable Jeff L. Rose, Chief Justice of the Court of Appeals for the Third District of Texas, with the seal of the Court affixed in the City of Austin on June 17, 2019.

JEFFREY D. KYLE, CLERK

By: Courtland Crocker, Deputy Clerk

APPPENDIX 7

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00031-CV

Appellant, Charles "Chuck" McCormick// Cross-Appellant, Madeline Connor

v.

Appellee, Madeline Connor// Cross-Appellee, Charles "Chuck" McCormick

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT
NO. D-1-GN-16-005883, HONORABLE SCOTT H. JENKINS, JUDGE PRESIDING

MEMORANDUM OPINION

On January 11, 2018, appellant Charles "Chuck" McCormick filed his notice of appeal from the trial court's order granting in part and denying in part his motion to dismiss under the Texas Citizens Participation Act, signed October 20, 2017. On March 29, we sent appellant notice that the notice of appeal appeared to be untimely. *See* Tex. R. App. P. 26.1(b), 26.3; *see also Spencer v. Pagliarulo*, 448 S.W.3d 605, 606 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (citing *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005)) (time to file notice of interlocutory appeal is "strictly set at twenty days" and motion for new trial does not extend appellate deadline). Appellant has since responded, filing a motion to dismiss the appeal as untimely filed. We grant the motion and dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a). We deny the motion for damages filed by appellee Madeline Connor. We dismiss any pending motions.

Cindy Olson Bourland, Justice

Before Justices Puryear, Pemberton, and Bourland

Dismissed for Want of Jurisdiction

Filed: May 2, 2018

APPPENDIX 8

FILE COPY

MANDATE

TO THE 419TH DISTRICT COURT of TRAVIS COUNTY, GREETINGS:

Before our Court of Appeals for the Thirteenth District of Texas, on the 6th day of September, 2018, the cause upon appeal to revise or reverse your judgment between

David McIntyre and Madeleine Connor, — Appellants,

v.

Eric Castro, et al., — Appellees.

CAUSE NO. 13-17-00565-CV (Tr.Ct.No. D-1-GN-15-003714)

was determined; and therein our said Court made its order in these words:

THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes that the judgment of the trial court should be affirmed. The Court orders the judgment of the trial court AFFIRMED. Costs of the appeal are adjudged against appellants David McIntyre and Madeleine Connor.

We further order this decision certified below for observance.

★ ★ ★ ★ ★ ★ ★

WHEREFORE, WE COMMAND YOU to observe the order of our said Court of Appeals for the Thirteenth District of Texas, in this behalf, and in all things have it duly recognized, obeyed and executed.

WITNESS, the Hon. Dori Contreras, Chief Justice of our Court of Appeals, with the seal thereof affixed, at the City of Edinburg, Texas this 8th day of March, 2019.

COURT OF APPEALS ★ OF THE STATE OF TEXAS

Dorian E. Ramirez

Dorian E. Ramirez, CLERK

APPPENDIX 9

FILE COPY

RE: Case No. 18-1127 DATE: 1/11/2019
COA #: 13-17-00565-CV TC#: D-1-GN-15-003714
STYLE: CONNOR v. CASTRO

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

DISTRICT CLERK TRAVIS COUNTY
TRAVIS COUNTY COURT
P. O. BOX 679003
AUSTIN, TX 78767
* DELIVERED VIA E-MAIL *

APPPENDIX 10

FILE COPY

Court of Appeals

Thirteenth District of Texas

NUECES COUNTY COURTHOUSE
901 LEOPARD, 10TH FLOOR
CORPUS CHRISTI, TEXAS 78401
361-888-0416 (TEL)
361-888-0794 (FAX)

HIDALGO COUNTY
COURTHOUSE ANNEX III
100 E. CANO, 5TH FLOOR
EDINBURG, TEXAS 78539
956-318-2405 (TEL)
956-318-2403 (FAX)

www.txcourts.gov/13thcoa

October 12, 2018

Hon. Madeleine B. Connor
Attorney at Law
PO Box 161962
Austin, TX 78716-1962
* DELIVERED VIA E-MAIL *

Re: Cause No. 13-17-00565-CV
Tr.Ct.No. D-1-GN-15-003714
Style: David McIntyre and Madeleine Connor v. Eric Castro, et al.

Appellants' amended motion for rehearing in the above cause was this day DENIED by this Court.

Very truly yours,

Dorian E. Ramirez

Dorian E. Ramirez, Clerk

cc: Hon. Scott M. Tschirhart (DELIVERED VIA E-MAIL)
Hon. Lowell F. Denton (DELIVERED VIA E-MAIL)